# Constitutionality Debate

### Academic standards can be enforced

#### The Supreme Court has held that actions that interfere with education can be limited

Post 91. Robert C. Post, Racist Speech, Democracy, and the First Amendment, 32 Wm. & Mary L. Rev. 267 (1991), <http://scholarship.law.wm.edu/wmlr/vol32/iss2/4>. NP 3/11/17.

Although the Supreme Court has often held that "the First Amendment rights of speech and association extend to the campuses of state universities," and even that "the campus of a public university, at least for its students, possesses many of the characteristics of a public forum," 221 in fact state institutions of higher learning are public organizations established for the express purpose of education. The Court has always held that "a university's mission is education" and has never construed the first amendment to deny a university's "authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities."222 The Court has explicitly recognized "a university's right to exclude .. .First Amendment activities that . .. substantially interfere with the opportunity of other students to obtain an education.'' 2 ?- Thus student speech incompatible with classroom processes may be censored; faculty publications inconsistent with academic standards may be evaluated and judged; and so forth.

### Classroom Content can be Controlled

#### Schools have control over what professors can teach – academic freedom is not a first amendment right

Post 12, Robert C. (Dean and Sol & Lillian Goldman Professor of Law, Yale Law School.) “Academic Freedom and the Production of Disciplinary Knowledge.” Democracy, Expertise, and Academic Freedom: A First Amendment Jurisprudence for the Modern State. 2012. NP 4/19/17.

Citing Hazelwood, the court in Aronov held that “[a]s a place of schooling with a teaching mission, we consider the University’s authority to reasonably control the content of its curriculum, particularly that content imparted during class time. Tangential to the authority over its curriculum, there lies some authority over the conduct of teachers in and out of the classroom that significantly bears on the curriculum or that gives the appearance of endorsement by the university.”94 The Aronov court felt driven to the conclusion that “[t]hough we are mindful of the invaluable role academic freedom plays in our public schools, particularly at the post-secondary level, we do not find support to conclude that academic freedom is an independent First Amendment right.”95

### Clear & Present Danger/Wartime

#### Speech isn’t protected if it constitutes a clear and present danger

CFR. <http://www.crf-usa.org/america-responds-to-terrorism/a-clear-and-present-danger.html>. NP

Another major attempt to regulate freedom of speech occurred during World War I. In 1917, Congress passed the Federal Espionage Act. This law prohibited all false statements intending to interfere with the military forces of the country or to promote the success of its enemies. In addition, penalties of up to $10,000 and/or 20 years in prison were established for anyone attempting to obstruct the recruitment of men into the military. In 1918, another law was passed by Congress forbidding any statements expressing disrespect for the U.S. government, the Constitution, the flag, or army and navy uniforms. Almost immediately, Charles Schenck, general secretary of the American Socialist Party, violated these laws. He was arrested and convicted for sending 15,000 anti-draft circulars through the mail to men scheduled to enter the military service. The circular called the draft law a violation of the 13th Amendment's prohibition of slavery. It went on to urge draftees not to "submit to intimidation," but to "petition for repeal" of the draft law. The government accused Schenck of illegally interfering with military recruitment under the espionage act. Schenck admitted that he had sent the circulars, but argued that he had a right to do so under the First Amendment and was merely exercising his freedom of speech. The issue found its way to the U.S. Supreme Court in the case of Schenck v. United States, 249 U.S. 47 (1919). It was the court's first important decision in the area of free speech. Justice Oliver Wendell Holmes wrote the opinion of the unanimous Court, which sided with the government. Justice Holmes held that Mr. Schenck was not covered by the First Amendment since freedom of speech was not an absolute right. There were times, Holmes wrote, when the government could legally restrict speech. According to Justice Holmes, that test is "whether the words...are used in such circumstances as to create a clear and present danger." Holmes said that in Charles Schenck's case the government was justified in arresting him because, "When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right." In the Schenck case, the highest court in the nation ruled that freedom of speech could be limited by the government. But Justice Holmes was careful to say that the government could only do this when there was a "clear and present danger" such as during wartime. While settling one legal issue, however, the Supreme Court created others. For example, what does a "clear and present danger" specifically mean, and when should it justify stopping people from speaking?

### Drug use ≠ protected

#### Adovcating illegal drug use is not protected

United States Courts, "What Does Free Speech Mean?," http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does, accessed 3-10-2017. NP

Freedom of speech does not include the right: To incite actions that would harm others (e.g., “[S]hout[ing] ‘fire’ in a crowded theater.”). Schenck v. United States, 249 U.S. 47 (1919). To make or distribute obscene materials. Roth v. United States, 354 U.S. 476 (1957). To burn draft cards as an anti-war protest. United States v. O’Brien, 391 U.S. 367 (1968). To permit students to print articles in a school newspaper over the objections of the school administration. Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988). Of students to make an obscene speech at a school-sponsored event. Bethel School District #43 v. Fraser, 478 U.S. 675 (1986). Of students to advocate illegal drug use at a school-sponsored event. **Morse v. Frederick, U.S. (2007).**

Outweighs – the website’s maintained by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary so it’s most likely to be accurate

### Educational missions can be pursued constitutionally

#### Constitutionality of regulations on campus relies on whether or not they’re consistent with university’s educational missions

Post 91. Robert C. Post, Racist Speech, Democracy, and the First Amendment, 32 Wm. & Mary L. Rev. 267 (1991), <http://scholarship.law.wm.edu/wmlr/vol32/iss2/4>. NP 3/11/17.

The regulation of racist speech within public institutions of higher learning, therefore, does not turn on the value of democratic self-governance and its realization in public discourse. Instead the constitutionality of such regulation depends upon the logic of instrumental rationality, and specifically upon three factors: (1) the nature of the educational mission of the university; (2) the instrumental connection of the regulation to the attainment of that mission; and (3) the deference that courts ought to display toward the instrumental judgment of institutional authorities.22 The current controversy regarding the constitutionality of regulating racist speech on university and college campuses may most helpfully be interpreted as a debate about the first of these factors, the constitutionally permissible educational objectives of public institutions of higher learning.225 **Courts have advanced** at least three different concepts of those objectives. The most traditional concept, which I refer to as "**civic education,"** views public education as an instrument of community life, and holds "that respect for constituted authority and obedience thereto is an essential lesson to qualify one for the duties of citizenship, and that the schoolroom is an appropriate place to teach that lesson. '22 6 Civic education conceptualizes instruction as a process of cultural reproduction, whereby community values are authoritatively handed down to the young. The **validity of those values is largely taken for granted, and there is a strong tendency to use them as a basis for the regulation of speech in the manner of the traditional common law.** The concept of civic education held sway in the years before the Warren Court and has recently been forcefully resurrected with regard to the regulation of speech within high schools. Thus in Bethel School District No. 408 v. Fraser2 2 the Court upheld the punishment of a high school student for having delivered an "offensive" and "indecent" student-government speech.22 8 The Court reasoned that "the objectives of public education" included "the 'inculcat[ion of] fundamental values necessary to the maintenance of a democratic political system.' "229 Among these values were "the habits and manners of civility as . . . indispensable to the practice of self-government."' ' 0 The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior.... .. . [S]chools must teach by example the shared values of a civilized social order. . . . The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct such as that indulged in by this confused boy.2 1 ' That the concept of civic education would lead to similar conclusions if applied to institutions of higher learning is evidenced by Chief Justice Burger's 1973 dissent in Papish v. University of Missouri Curators: 2 In theory, at least, a university is not merely an arena for the discussion of ideas by students and faculty; it is also an institution where individuals learn to express themselves in acceptable, civil terms. We provide that environment to the end that students may learn the self-restraint necessary to the functioning of a civilized society and understand the need for those external restraints to which we must all submit if group existence is to be tolerable.

### Hate Speech ≠ Protected

#### Brown v. Board of Education establishes precedent for limiting racist hate speech – you misunderstand history

Lawrence 90. Charles R. Lawrence III, If He Hollers Let Him Go: Regulating Racist Speech on Campus, 1990 Duke Law Journal 431-483 (1990) <http://scholarship.law.duke.edu/dlj/vol39/iss3/2>. NP 1/20/17.

The landmark case of Brown v. Board of Education is not a case we normally think of as a case about speech. As read most narrowly, the case is about the rights of black children to equal educational opportunity. But Brown can also be read more broadly to articulate a principle central to any substantive understanding of the equal protection clause, the foundation on which all anti-discrimination law rests. This is the principle of equal citizenship. Under that principle "every individual is presumptively entitled to be treated by the organized society as a respected, responsible, and participating member."' 36 Furthermore, it requires the affirmative disestablishment of societal practices that treat people as members of an inferior or dependent caste, as unworthy to participate in the larger community. The holding in Brown-that racially segregated schools violate the equal protection clause-reflects the fact that segregation amounts to a demeaning, caste-creating practice. 37 The key to this understanding of Brown is that the practice of segregation, the practice the Court held inherently unconstitutional, was speech. Brown held that segregation is unconstitutional not simply because the physical separation of black and white children is bad38 or because resources were distributed unequally among black and white schools. 39 Brown held that segregated schools were unconstitutional primarily because of the message segregation conveys-the message that black children are an untouchable caste, unfit to be educated with white children. 4° Segregation serves its purpose by conveying an idea. It stamps a badge of inferiority upon blacks, and this badge communicates a message to others in the community, as well as to blacks wearing the badge, that is injurious to blacks. Therefore, Brown may be read as regulating the content of racist speech. As a regulation of racist speech, the decision is an exception to the usual rule that regulation of speech content is presumed unconstitutional. 41

#### It violates the spirit of the first amendment, which is to promote free speech.

Lawrence 90 Charles R. Lawrence (Professor of Law, Stanford Law School, Stanford University.) “IF HE HOLLERS LET HIM GO: REGULATING RACIST SPEECH ON CAMPUS” Duke Law Journal Vol. 1990:431 <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3115&context=dlj> JW

This regulation and others like it have been characterized in the press as the work of "thought police,"'84 but it does nothing more than prohibit intentional face-to-face insults, a form of speech that is unprotected by the first amendment. When racist speech takes the form of face-to-face insults, catcalls, or other assaultive speech aimed at an individual or small group of persons, then it falls within the "fighting words" exception to first amendment protection. 5 The Supreme Court has held that words that "by their very utterance inflict injury or tend to incite an immediate breach of the peace" 86 are not constitutionally protected. Face-to-face racial insults, like fighting words, are undeserving of first amendment protection for two reasons. The first reason is the immediacy of the injurious impact of racial insults. The experience of being called "nigger," "spic," "Jap," or "kike" is like receiving a slap in the face. The injury is instantaneous. There is neither an opportunity for intermediary reflection on the idea conveyed8 7 nor an opportunity for responsive speech. The harm to be avoided is both clear and present. The second reason that racial insults should not fall under protected speech relates to the purpose underlying the first amendment. If the purpose of the first amendment is to foster the greatest amount of speech, then racial insults disserve that purpose. Assaultive racist speech functions as a preemptive strike. The racial invective is experienced as a blow, not a proffered idea, and once the blow is struck, it is unlikely that dialogue will follow. Racial insults are undeserving of first amendment protection because the perpetrator's intention is not to discover truth or initiate dialogue but to injure the victim.88 The fighting words doctrine anticipates that the verbal "slap in the face" of insulting words will provoke a violent response with a resulting breach of the peace. When racial insults are hurled at minorities, the response may be silence or flight rather than a fight, but the preemptive effect on further speech is just as complete as with fighting words.89 Women and minorities often report that they find themselves speechless in the face of discriminatory verbal attacks. This inability to respond is not the result of oversensitivity among these groups, as some individuals who oppose protective regulation have argued. Rather, it is the product of several factors, all of which reveal the non-speech character of the initial preemptive verbal assault. The first factor is that the visceral emotional response to personal attack precludes speech. Attack produces an instinctive, defensive psychological reaction. Fear, rage, shock, and flight all interfere with any reasoned response. Words like "nigger," "kike," and "faggot" produce physical symptoms that temporarily disable the victim, and the perpetrators often use these words with the intention of producing this effect. Many victims do not find words of response until well after the assault when the cowardly assaulter has departed.

### Incitement ≠ Protected

#### Incitement’s not protected

United States Courts, "What Does Free Speech Mean?," http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does, accessed 3-10-2017. NP

Freedom of speech does not include the right: To incite actions that would harm others (e.g., “[S]hout[ing] ‘fire’ in a crowded theater.”). Schenck v. United States, 249 U.S. 47 (1919). To make or distribute obscene materials. Roth v. United States, 354 U.S. 476 (1957). To burn draft cards as an anti-war protest. United States v. O’Brien, 391 U.S. 367 (1968). To permit students to print articles in a school newspaper over the objections of the school administration. Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988). Of students to make an obscene speech at a school-sponsored event. Bethel School District #43 v. Fraser, 478 U.S. 675 (1986). Of students to advocate illegal drug use at a school-sponsored event. Morse v. Frederick, \_\_ U.S. \_\_ (2007).

Outweighs – a. the website’s maintained by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary so it’s most likely to be accurate, b. it cites specific court cases rather than speculating

### Money = Speech

#### Speech is distinct from conduct – spending money is constitutionally subject to regulation

David Kairys 10, 1-22-2010, "The misguided theories behind Citizens United v. FEC.," Slate Magazine, http://www.slate.com/articles/news\_and\_politics/jurisprudence/2010/01/money\_isnt\_speech\_and\_corporations\_arent\_people.html, accessed 4-21-2017

The money-is-speech theory turns out to be a rhetorical device used exclusively to provide First Amendment protection for all money that wealthy people and businesses want to give to, or to spend, on campaigns. It also doesn't make sense under long established free-speech law. Spending or donating money to support or facilitate speech is expressive and deserves some protection. But money simply doesn't make it into the category of things that are and embody speech, such as books, films, or blogs. **T**raditional speech-law analysis would separate the speech from the conduct (or "nonspeech") elements of campaign spending and donation and allow considerable leeway to regulate the latter. Even as to "pure" speech, "compelling" government interests are overriding. And **spending and donating money seem, among the traditional speech-law categories, a "manner" of speaking that the court has said usually can be "reasonably regulated."**

#### Ignore Supreme Court decisions about whether or not money is speech – decisions go against historical precedent and is a product of wealthy elite pulling strings in the government

David Kairys 10, 1-22-2010, "The misguided theories behind Citizens United v. FEC.," Slate Magazine, http://www.slate.com/articles/news\_and\_politics/jurisprudence/2010/01/money\_isnt\_speech\_and\_corporations\_arent\_people.html, accessed 4-21-2017

In a largely unnoticed rewriting of speech law, the conservative justices have applied their theories and doctrines inconsistently and selectively, as they have money-is-speech. Some of the conservatives' recent innovations would seem to validate campaign finance laws. The "secondary effects" doctrine, for example, allows government to restrict speech if government can suggest a general, non-speech-related purpose, even if the real purpose is speech-related. The court ignored this doctrine in Citizens' United and other campaign finance cases—even though campaign finance reform is aimed not at speech itself, but at large amounts of money that skew, corrupt, and undermine elections. The court's invalidation of campaign finance reforms over the last few decades isn't about censorship or suppressed speakers or viewpoints. At its core, this line of cases is about dominance of the political and electoral system by wealthy people and corporations and about legitimizing a political and electoral system that is unrepresentative, money-driven, corrupt, outmoded, and dysfunctional. Wealthy people and corporate managers shouldn't dominate politics or have more and better speech rights than the rest of us. That seems like an obvious truth. And yet the Supreme Court's recent decisions move us away from it.

### Narrowly Tailored = Constitutional

#### If a regulation is narrowly tailored to promote a significant government interest, it’s constitutional

Ruane 14, Kathleen Ann. (Legislative Attorney). Freedom of Speech and Press: Exceptions to the First Amendment. https://fas.org/sgp/crs/misc/95-815.pdf September 8, 2014. NP 3/10/17.

Some laws are not designed to limit freedom of expression, but nevertheless can have that effect. For example, when a National Park Service regulation prohibiting camping in certain parks was applied to prohibit demonstrators who were attempting to call attention to the plight of the homeless from sleeping in certain Washington, DC parks, it had the effect of limiting the demonstrators’ freedom of expression. Nevertheless, the Court found that application of the regulation did not violate the First Amendment because the regulation was content-neutral and was narrowly focused on a substantial governmental interest in maintaining parks “in an attractive and intact condition.”83 The Supreme Court has said that an incidental restriction on speech is constitutional if it is not “greater than necessary to further a substantial governmental interest.”84 However, the Court has made clear that an incidental restriction, unlike a content-based restriction, “need not be the least restrictive or least intrusive means” of furthering a governmental interest. Rather, the restriction must be “narrowly tailored,” and “the requirement of narrow tailoring is satisfied ‘so long as the ... regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation.’”

### Obscenity ≠ Protected

#### Obscenity is not protected

United States Courts, "What Does Free Speech Mean?," http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does, accessed 3-10-2017. NP

Freedom of speech does not include the right: To incite actions that would harm others (e.g., “[S]hout[ing] ‘fire’ in a crowded theater.”). Schenck v. United States, 249 U.S. 47 (1919). To make or distribute obscene materials. Roth v. United States, 354 U.S. 476 (1957). To burn draft cards as an anti-war protest. United States v. O’Brien, 391 U.S. 367 (1968). To permit students to print articles in a school newspaper over the objections of the school administration. Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988). Of students to make an obscene speech at a school-sponsored event. Bethel School District #43 v. Fraser, 478 U.S. 675 (1986). Of students to advocate illegal drug use at a school-sponsored event. Morse v. Frederick, \_\_ U.S. \_\_ (2007).

Outweighs – the website’s maintained by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary so it’s most likely to be accurate

### Prior Restraint ≠ Constitutional

#### Prior restraint is not constitutional

Ruane 14, Kathleen Ann. (Legislative Attorney). Freedom of Speech and Press: Exceptions to the First Amendment. https://fas.org/sgp/crs/misc/95-815.pdf September 8, 2014. NP 3/10/17.

With respect to both these types of prior restraint, the Supreme Court has written that “[a]ny system of prior restraint of expression comes to this Court bearing a heavy presumption against its constitutional validity.”38 Prior restraints, it has held, are the most serious and the least tolerable infringement on First Amendment rights.... A prior restraint ... by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication “chills” speech, prior restraint “freezes” it at least for the time. The damage can be particularly great when the prior restraint falls upon the communication of news and commentary on current events.39 The Supreme Court has written that “[t]he special vice of a prior restraint is that communication will be suppressed ... before an adequate determination that it is unprotected by the First Amendment.”40 The prohibition on prior restraint, thus, is essentially a limitation on restraints until a final judicial determination that the restricted speech is not protected by the First Amendment. It is a limitation, for example, on temporary restraining orders and preliminary injunctions pending final judgment, not on permanent injunctions after a final judgment is made that the restricted speech is not protected by the First Amendment.41

### Research ≠ Speech

#### Research is not protected speech

**Hyde**-Keller summarizes and quotes Post 14, O'rya. Robert C. Post on why speech at universities must be regulated. November 14, 2016. https://news.brown.edu/articles/2016/11/post

“There are different kinds of freedoms that are related to the two different kinds of missions of a modern university — research on the one hand, teaching on the other,” he said. “But in either case, these freedoms are conceptually distinct from the kind of freedom of speech that derives from the political arena, where all are equal and all have to exist for the end of self-governance. The university is not about self-governance. The university is about the attainment of education and the attainment of knowledge.” VIDEO: "Freedom of Speech in the University" To frame his argument, Post first defined three basic rules governing freedom of speech as outlined in the First Amendment to the U.S. Constitution and defined by the Supreme Court: first, the state can’t tell a speaker that they have to speak about any particular content; second, there are no true or false opinions and all ideas are equal; and third, the state cannot compel a person to speak. He then defined the mission of most universities as being primarily two things — research, or the discovery and advancement of knowledge; and teaching, the conveying of knowledge. In order to advance these two goals, he said, universities cannot and should not follow these three basic rules of freedom of speech. Research, Post said, is ultimately based in the notion that not everyone has equal knowledge of a given topic and that expert knowledge is created through disciplinary study. “When we are talking about university research and expanding knowledge, it is resting on a disciplinary hierarchy, which is exactly opposite of the democratic equality on which freedom of speech rests,” he said. Therefore, in order to perform research and to advance it, he said, universities must discriminate on content, make judgments that some ideas are better than others and compel professors and researchers to speak in order to communicate their knowledge. Though these actions further the mission of a university, he said, they violate the rules of the First Amendment.

#### Research is not a constitutional category – certain kinds of dangerous research can be regulated

Post, Robert C., "Constitutional Restraints on the Regulations of Scientific Speech and Scientific Research" (2009). Faculty Scholarship Series. Paper 165. <http://digitalcommons.law.yale.edu/fss_papers/16>. NP 3/11/17.

The point of distinguishing the regulation of ‘‘scientific speech’’ from the regulation of ‘‘scientific research’’ is that research seems to involve what most would regard as conduct. Yet different forms of scientific research will possess different constitutional properties that will raise different constitutional questions. A law banning the ‘‘research’’ of a mathematician, for example, would seem to prohibit reading and would for that reason likely trigger First Amendment coverage. A law banning the use of anthrax bacteria, by contrast, would likely not trigger First Amendment coverage, even though it may shut down the research of particular scientists. ‘‘Scientific research,’’ in other words, is not a single, coherent constitutional category. It embraces many different phenomena that are differently connected to First Amendment values.

### Time/Place/Manner Restrictions = Constitutional

#### Universities can constitutionally place time/place/manner restrictions on speech

Welch 14, Benjamin, (University of Nebraska-Lincoln) "An Examination of University Speech Codes’ Constitutionality and Their Impact on High-Level Discourse" (2014). Theses from the College of Journalism and Mass Communications. Paper 40. NP 2/22/17.

Interestingly, however, since the inception of various speech codes in American universities in the late 1980s and ‘90s6 , research suggests that campus administrators are overstepping their bounds in facilitating civil discourse and are violating the First Amendment in the process. While likely well-intentioned, university speech codes chill free speech by threatening punishment or censorship for offenses as vague as “any action that is motivated by bias”7 or as blatantly unconstitutional as a ban on “sexually, ethnically, racially, or religiously offensive messages.”8 Of course, as with all First Amendment discourse, administrators at public colleges have the ability to place time, place, and manner restrictions on some speech if the restrictions are, according to Ward v. Rock Against Racism, content neutral, narrowly tailored, serve a significant governmental interest, and leave open ample alternative channels for communication.9 For example, a protest cannot substantially restrict the day-to-day functionality of a university, wherein students prevent others from attending class or take over an administrative building.

# Hate Speech

### General

#### Hate speech codes are misused – activists, not racists get silenced

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

#### The first reason that laws censoring racist speech may undermine the goal of combating racism flows from the discretion such laws inevitably vest in prosecutors, judges, and the other individuals who implement them. One ironic, even tragic, result of this discretion is that **members of minority groups** themselves-the very people whom the law is intended to protect-**are likely targets of punishment.** For example, among **the** first **individuals prosecuted under the British Race Relations Act** of 1965 **were black power leaders**.368 Their overtly racist messages un- doubtedly expressed legitimate anger at real discrimination, yet the stat- ute drew no such fine lines, nor could any similar statute possibly do so. **Rather than curbing speech offensive to minorities, this** British **law** in- stead **has been regularly used to curb the speech of blacks, trade union- ists, and anti-nuclear activists.**369 In perhaps the ultimate irony, **this statute**, which was intended to restrain the neo-Nazi National Front, in- stead **has barred expression by the Anti-Nazi League**.370 The British experience is not unique. History teaches us that **anti- hate speech laws regularly have been used to oppress racial and other minorities**. For example, none of the anti-Semites who were responsible for arousing France against Captain Alfred Dreyfus were ever prose- cuted for group libel. But Emile Zola was prosecuted for libeling the French clergy and military in his "J'Accuse," and he had to flee to Eng- land to escape punishment.371 Additionally, closer to home, the very doctrines that Professor Lawrence invokes to justify regulating campus hate speech-for example, the fighting words doctrine, upon which he chiefly relies-are particularly threatening to the speech of racial and political minorities.372 The general lesson that rules banning hate speech will be used to punish minority group members has proven true in the specific context of campus hate speech regulations. In 1974, in a move aimed at the Na- tional Front, **the British National Union of Students (NUS) adopted a resolution that representatives of "openly racist and fascist organiza- tions" were to be prevented from speaking on college campuses** "by whatever means necessary (including disruption of the meeting)."373 A substantial motivation for the rule had been to stem an increase in cam- pus anti-Semitism. Ironically, however, following the United Nations' cue,374 **some** British **students deemed Zionism a form of racism** beyond the bounds of permitted discussion. Accordingly, in 1975 **British students invoked the** NUS **resolution to disrupt speeches by Israelis and Zionists,** including the Israeli ambassador to England. The intended tar- get of the NUS resolution, the National Front, applauded this result. However, the NUS itself became disenchanted by this and other unin- tended consequences of its resolution and repealed it in 1977.375 The British experience under its campus anti-hate speech rule paral- lels the experience in the United States under the one such rule that has led to a judicial decision. During the approximately one year that the University of Michigan rule was in effect, there were more than twenty cases of whites charging blacks with racist speech.376 More importantly, the only two instances in which the rule was invoked to sanction racist speech (as opposed to sexist and other forms of hate speech) involved the punishment of speech by or on behalf of black students.377 Additionally, the only student who was subjected to a full-fledged disciplinary hearing under the Michigan rule was a black student accused of homophobic and sexist expression.378 In seeking clemency from the sanctions imposed fol- lowing this hearing, the student asserted he had been singled out because of his race and his political views.379 Others who were punished for hate speech under the Michigan rule included several Jewish students accused of engaging in anti-Semitic expression380 and an Asian-American student accused of making an anti-black comment.381 Likewise, the student who recently brought a lawsuit challenging the University of Connecticut's hate speech policy, under which she had been penalized for an allegedly homophobic remark, was Asian-American.382

#### Punishment by administrators doesn’t change attitudes – policies are applied unevenly, and it just makes hate more appealing and persuasive – Britain proves

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

Parts II and III of this Article emphasized the principled reasons, arising from first amendment theory, for concluding that racist speech should receive the same protection as other offensive speech. This con- clusion also is supported by pragmatic or strategic considerations con- cerning the efficacious pursuit of equality goals. Not only would rules censoring racist speech fail to reduce racial bias, but they might even undermine that goal. First, there is no persuasive psychological evidence that punishment for name-calling changes deeply held attitudes. To the contrary, psychological studies show that censored speech becomes more appealing and persuasive to many listeners merely by virtue of the censorship.358 Nor is there any empirical evidence, from the countries that do out- law racist speech, that censorship is an effective means to counter racism. For example, Great Britain began to prohibit racist defamation in 1965.359 A quarter century later, this law has had no discernible adverse impact on the National Front and other neo-Nazi groups active in Brit- ain.360 As discussed above,361 it is impossible to draw narrow regulations that precisely specify the particular words and contexts that should lead to sanctions. Fact-bound determinations are required. For this reason, authorities have great discretion in determining precisely which speakers and which words to punish. Consequently, even vicious racist epithets have gone unpunished under the British law.362 Moreover, even if actual or threatened enforcement of the law has deterred some overt racist in- sults, that enforcement has had no effect on more subtle, but nevertheless clear, signals of racism.363 Some observers believe that racism is even more pervasive in Britain than in the United States.364

#### Banning bigotry lets sentiments fester underground and show in more virulent ways

Malik 12, Kenan. (Malik is a writer, lecturer and broadcaster) Why Hate Speech Should Not Be Banned. <https://kenanmalik.wordpress.com/2012/04/19/why-hate-speech-should-not-be-banned/> NP 2/22/17.

KM: I believe that no speech should be banned solely because of its content; I would distinguish ‘content-based’ regulation from ‘effects-based’ regulation and permit the prohibition only of speech that creates imminent danger. I oppose content-based bans both as a matter of principle and with a mind to the practical impact of such bans. Such laws are wrong in principle because free speech for everyone except bigots is not free speech at all. It is meaningless to defend the right of free expression for people with whose views we agree. The right to free speech only has political bite when we are forced to defend the rights of people with whose views we profoundly disagree. And in practice, you cannot reduce or eliminate bigotry simply by banning it. You simply let the sentiments fester underground. As Milton once put it, to keep out ‘evil doctrine’ by licensing is ‘like the exploit of that gallant man who thought to pound up the crows by shutting his Park-gate’. Take Britain. In 1965, Britain prohibited incitement to racial hatred as part of its Race Relations Act. The following decade was probably the most racist in British history. It was the decade of ‘Paki-bashing’, when racist thugs would seek out Asians to beat up. It was a decade of firebombings, stabbings, and murders. In the early 1980s, I was organizing street patrols in East London to protect Asian families from racist attacks. Nor were thugs the only problem. Racism was woven into the fabric of public institutions. The police, immigration officials – all were openly racist. In the twenty years between 1969 and 1989, no fewer than thirty-seven blacks and Asians were killed in police custody – almost one every six months. The same number again died in prisons or in hospital custody. When in 1982, cadets at the national police academy were asked to write essays about immigrants, one wrote, ‘Wogs, nignogs and Pakis come into Britain take up our homes, our jobs and our resources and contribute relatively less to our once glorious country. They are, by nature, unintelligent. And can’t at all be educated sufficiently to live in a civilised society of the Western world’. Another wrote that ‘all blacks are pains and should be ejected from society’. So much for incitement laws helping create a more tolerant society. aToday, Britain is a very different place. Racism has not disappeared, nor have racist attacks, but the open, vicious, visceral bigotry that disfigured the Britain when I was growing up has largely ebbed away. It has done so not because of laws banning racial hatred but because of broader social changes and because minorities themselves stood up to the bigotry and **fought back**. Of course, as the British experience shows, hatred exists not just in speech but also has physical consequences. Is it not important, critics of my view ask, to limit the fomenting of hatred to protect the lives of those who may be attacked? In asking this very question, they are revealing the distinction between speech and action. Saying something is not the same as doing it. But, in these post-ideological, postmodern times, it has become very unfashionable to insist on such a distinction. In blurring the distinction between speech and action, what is really being blurred is the idea of human agency and of moral responsibility. Because lurking underneath the argument is the idea that people respond like automata to words or images. But people are not like robots. They think and reason and act on their thoughts and reasoning. Words certainly have an impact on the real world, but that impact is mediated through human agency.

#### T – Banning bigotry lets sentiments fester underground where they can’t be confronted – Britain proves

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### Codes = misused

#### Hate speech codes silence activists

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

#### The first reason that laws censoring racist speech may undermine the goal of combating racism flows from the discretion such laws inevitably vest in prosecutors, judges, and the other individuals who implement them. One ironic, even tragic, result of this discretion is that **members of minority groups** themselves-the very people whom the law is intended to protect-**are likely targets of punishment.** For example, among **the** first **individuals prosecuted under the British Race Relations Act** of 1965 **were black power leaders**.368 Their overtly racist messages un- doubtedly expressed legitimate anger at real discrimination, yet the stat- ute drew no such fine lines, nor could any similar statute possibly do so. **Rather than curbing speech offensive to minorities, this** British **law** in- stead **has been regularly used to curb the speech of blacks, trade union- ists, and anti-nuclear activists.**369 In perhaps the ultimate irony, **this statute**, which was intended to restrain the neo-Nazi National Front, in- stead **has barred expression by the Anti-Nazi League**.370 The British experience is not unique. History teaches us that **anti- hate speech laws regularly have been used to oppress racial and other minorities**. For example, none of the anti-Semites who were responsible for arousing France against Captain Alfred Dreyfus were ever prose- cuted for group libel. But Emile Zola was prosecuted for libeling the French clergy and military in his "J'Accuse," and he had to flee to Eng- land to escape punishment.371 Additionally, closer to home, the very doctrines that Professor Lawrence invokes to justify regulating campus hate speech-for example, the fighting words doctrine, upon which he chiefly relies-are particularly threatening to the speech of racial and political minorities.372 The general lesson that rules banning hate speech will be used to punish minority group members has proven true in the specific context of campus hate speech regulations. In 1974, in a move aimed at the Na- tional Front, **the British National Union of Students (NUS) adopted a resolution that representatives of "openly racist and fascist organiza- tions" were to be prevented from speaking on college campuses** "by whatever means necessary (including disruption of the meeting)."373 A substantial motivation for the rule had been to stem an increase in cam- pus anti-Semitism. Ironically, however, following the United Nations' cue,374 **some** British **students deemed Zionism a form of racism** beyond the bounds of permitted discussion. Accordingly, in 1975 **British students invoked the** NUS **resolution to disrupt speeches by Israelis and Zionists,** including the Israeli ambassador to England. The intended tar- get of the NUS resolution, the National Front, applauded this result. However, the NUS itself became disenchanted by this and other unin- tended consequences of its resolution and repealed it in 1977.375 The British experience under its campus anti-hate speech rule paral- lels the experience in the United States under the one such rule that has led to a judicial decision. During the approximately one year that the University of Michigan rule was in effect, there were more than twenty cases of whites charging blacks with racist speech.376 More importantly, the only two instances in which the rule was invoked to sanction racist speech (as opposed to sexist and other forms of hate speech) involved the punishment of speech by or on behalf of black students.377 Additionally, the only student who was subjected to a full-fledged disciplinary hearing under the Michigan rule was a black student accused of homophobic and sexist expression.378 In seeking clemency from the sanctions imposed fol- lowing this hearing, the student asserted he had been singled out because of his race and his political views.379 Others who were punished for hate speech under the Michigan rule included several Jewish students accused of engaging in anti-Semitic expression380 and an Asian-American student accused of making an anti-black comment.381 Likewise, the student who recently brought a lawsuit challenging the University of Connecticut's hate speech policy, under which she had been penalized for an allegedly homophobic remark, was Asian-American.382

#### Speech codes are used to silence those who resist the administration

Welch 14, Benjamin, (University of Nebraska-Lincoln) "An Examination of University Speech Codes’ Constitutionality and Their Impact on High-Level Discourse" (2014). Theses from the College of Journalism and Mass Communications. Paper 40. NP 2/22/17.

Simply put, university administration in some capacity is generally responsible for creating most incidents of censorship, though the exact reasons may vary. Ironically, for example, when a code is in place to prevent bullying or harassment, administrators have been found to use that code to punish those who have spoken out against, mocked or criticized them. This theory leaves open the possibility for students to be tricked into supporting rules that ultimately only protect those in power. In “Kindly Inquisitors,” Jonathan Rauch compares many speech code policies and their enforcement to fundamentalism and former rulers who dominated by persecuting those whose ideas were different based on the rulers’ own interpretation of the truth: Islamic theocrats, Egyptian pharaohs, Chinese emperors, divine-right kings of Europe, the head priests of the Mayans, Josef Stalin and Adolf Hitler. Fundamentalist systems traditionally have been characterized as punishing or destroying people in defense of calcified ideas.28 The parallels between these systems and the speech code discussion is somewhat alarming, though perhaps extreme.

#### Rights of minorities are dependent on the rights of bigots – protecting their speech is the only way minorities won’t be silenced

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

In light of the universal condemnation of racial discrimination and the world-wide regulation of racist speech, it certainly is tempting to con- sider excepting racist speech from first amendment protection. Episodes of racist speech, such as those cited by Professor Lawrence and others, make a full commitment to free speech at times seem painful and diffi- cult. Civil libertarians find such speech abhorrent, given our dedication to eradicating racial discrimination and other forms of bigotry. But ex- perience has confirmed the truth of the indivisibility principle articulated above: History demonstrates that if the freedom of speech is weakened for one person, group, or message, then **it** is no longer there for others.262 The free speech victories that civil libertarians have won in the context of defending the right to express racist and other anti-civil libertarian messages have been used to protect speech proclaiming anti-racist and pro-civil libertarian messages. For example, in 1949, the ACLU de- fended the right of Father Terminiello, a suspended Catholic priest, to give a racist speech in Chicago. The Supreme Court agreed with that position in a decision that became a landmark in free speech history.263 Time and again during the 1960s and 1970s, the ACLU and other civil rights groups were able to defend free speech rights for civil rights dem- onstrators by relying on the Terminiello d

She claimed that, among the other students who had engaged in similar expression, she had been singled out for punishment because of her ethnic background.

#### Silencing offensive speech just flips the script and ensures that activists get targeted

Anthony L. Fisher 17, 1-2-2017, "The free-speech problem on campus is real. It will ultimately hurt dissidents.," Vox, http://www.vox.com/the-big-idea/2016/12/13/13931524/free-speech-pen-america-campus-censorship, accessed 2-22-2017 NP

But pretending "problematic" thought doesn’t exist won't make it so; such perspectives should be engaged, defeated, in the public arena of ideas. In perhaps the most cogent line of the entire report, the authors write: “Overreaction to problematic speech may impoverish the environment for speech for all.” In the name of social justice, some students are demanding administrators become the arbiters of what speech is legitimate and what isn’t. These students don’t seem to grasp that by granting authority figures the power to adjudicate which speakers have the right to be heard, they will inevitably find their own speech silenced when opponents claim offense, fear, or discomfort. Calls for crackdowns on “offensive” speech inevitably boomerang. It’s already happening. Just ask the Palestinian activists whose boycott campaigns against Israel have been deemed hate speech by a number of public universities, and whose future political activities could be endangered by an act of Congress. Just this month, the Senate unanimously passed the "Anti-Semitism Awareness Act,” which directs the Department of Education to use the bill's contents as a guideline when adjudicating complaints of anti-Semitism on campus. Among the speech-chilling components of the bill, the political (and subjective) act of judging Israel by an "unfair double standard" could be considered hate speech.To cite other examples of unintended consequences of the crackdown on “offensive” speech, a black student at the University of Michigan was punished for calling another student “white trash,” and conservative law students at Georgetown claimed they were “traumatized” when an email critical of deceased Supreme Court Justice Antonin Scalia landed in their inboxes. The PEN America report also notes the Foundation for Individual Rights’ analysis of hundreds of campuses with “severely restrictive” speech codes. While a number of these campuses don't aggressively enforce their speech codes, the rules remain on the books; more than a dozen such codes have been overturned in the courts.What’s even more concerning is the increasingly popular notion that some ideas, such as opposition to abortion, should simply be “non-platformed" — that is, deemed unworthy of even being heard on campus. Although the trend of denying contentious speakers such as former Secretary of State Condoleezza Rice or refugee turned Dutch politician and critic of Islam Ayaan Hirsi Ali public platforms by "disinviting" them from campus is disconcerting, it is not censorship.However, a pro-choice group physically blocking the display of a pro-life group on the campus of the University of Georgia is a form of censorship. As is the case of University of California Santa Barbara professor Mireille Miller-Young, who assaulted a young woman holding a pro-life placard including graphic imagery in a "free speech" zone on campus and stole her sign. When the young woman objected to the theft of her property, Miller-Young replied, "I may be a thief, but you're a terrorist." Like it or not, almost half of all Americans consider themselves pro-life. Banning their perspective from campus won't win over converts, and it’s both immoral and counterproductive to declare completely legitimate political perspectives beyond the pale. Think of antiwar protests or demonstrations in support of integration when both causes were broadly unpopular, and then try to consider a majority on campus declaring their school a "safe space" from such "offensive" expressions of free speech.

#### T - Codes target minorities, not bigots

ACLU N.D. American Civil Liberties Union, "Hate Speech on Campus," https://www.aclu.org/other/hate-speech-campus, accessed 2-22-2017

A: Historically, defamation laws or codes have proven ineffective at best and counter-productive at worst. For one thing, depending on how they're interpreted and enforced, they can actually work against the interests of the people they were ostensibly created to protect. Why? Because the ultimate power to decide what speech is offensive and to whom rests with the authorities -- the government or a college administration -- not with those who are the alleged victims of hate speech. In Great Britain, for example, a Racial Relations Act was adopted in 1965 to outlaw racist defamation. But throughout its existence, the Act has largely been used to persecute activists of color, trade unionists and anti-nuclear protesters, while the racists -- often white members of Parliament -- have gone unpunished. Similarly, under a speech code in effect at the University of Michigan for 18 months, white students in 20 cases charged black students with offensive speech. One of the cases resulted in the punishment of a black student for using the term "white trash" in conversation with a white student. The code was struck down as unconstitutional in 1989 and, to date, the ACLU has brought successful legal challenges against speech codes at the Universities of Connecticut, Michigan and Wisconsin. These examples demonstrate that speech codes don't really serve the interests of persecuted groups. The First Amendment does. As one African American educator observed: "I have always felt as a minority person that we have to protect the rights of all because if we infringe on the rights of any persons, we'll be next."

### A2 minorities can’t handle speaking back

#### This argument is super paternalistic – your framing denies minority’s agency

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

Banning racist speech could undermine the goal of combating ra- cism for additional reasons. Some black scholars and activists maintain that an anti-racist speech policy may perpetuate a paternalistic view of minority groups, suggesting that they are incapable of defending themselves against biased expressions.396 Additionally, an anti-hate speech policy stultifies the candid intergroup dialogue concerning racism and other forms of bias that constitutes an essential precondition for reducing discrimination. In a related vein, education, free discussion, and the airing of misunderstandings and failures of sensitivity are more likely to promote positive intergroup relations than are legal battles. The rules barring hate speech will continue to generate litigation and other forms of controversy that will exacerbate intergroup tensions. Finally, the cen- sorship approach is diversionary. It makes it easier for communities to avoid coming to grips with less convenient and more expensive, but ultimately more meaningful, approaches for combating racial discrimination

#### Delgado and Yun indict counterspeech in instances of harassment which is not protected –counterspeech can be non-verbal and creates communities that empower targets of speech

Calleros 95. Paternalism, Counterspeech, and Campus Hate-Speech Codes: A Reply to Delgado and Yun. Charles R. Calleros (Professor of Law, Arizona State University). 1995. Arizona State Law Journal. NP 2/24/17.

First, no responsible free speech advocate argues that a target of hate speech should directly talk back to a racist speaker in circumstances that quickly could lead to a physical altercation. If one or more hateful speakers closely confronts a member of a minority group with racial epithets or other hostile remarks in circumstances that lead the target of the speech to reasonably fear for her safety, in most circumstances she should seek assistance from campus police or other administrators before "talking back." Even staunch proponents of free speech agree that such threatening speech and conduct is subject to regulation and justifies more than a purely educative response. The same would be true of Delgado's and Yun's other examples of speech conveyed in a manner that defaces another's property or 56 When offensive or hateful speech is not threatening, damaging, or impermissibly invasive and therefore may constitute protected speech, 57 education and counterspeech often will be an appropriate response. However, proponents of free speech do not contemplate that counterspeech always, or even normally, will be in the form of an immediate exchange of views between the hateful speaker and his target. Nor do they contemplate that the target should bear the full burden of the response. Instead, effective counterspeech often takes the form of letters, discussions, or demonstrations joined in by many persons and aimed at the entire campus population or a community within it. Typically, it is designed to expose the moral bankruptcy of the hateful ideas, to demonstrate the strength of opinion and numbers of those who deplore the hateful speech, and to spur members of the campus community to take voluntary, constructive action to combat hate and to remedy its ill effects. 58 Above all, it can serve to define and underscore the community of support enjoyed by the targets of the hateful speech, faith in which may have been shaken by the hateful speech. Moreover, having triggered such a reaction with their own voices, the targets of the hateful speech may well feel a sense of empowerment to compensate for the undeniable pain of the speech. 59

#### Minorities want free speech – it’s key to effective resistance

Calleros 95. Paternalism, Counterspeech, and Campus Hate-Speech Codes: A Reply to Delgado and Yun. Charles R. Calleros (Professor of Law, Arizona State University). 1995. Arizona State Law Journal. NP 2/24/17.

The first example shows how several outspoken African-American students benefitted from the atmosphere of free speech and counterspeech at A.S.U. after the racist poster incident described in part A above. Vernard Bonner, the African-American leader of Students Against Racism, vented his outrage over the racist poster with an opinion letter that some complained reflected racist stereotyping of whites. 83 Although his own speech was offensive to some and sparked criticism, he was secure in his right to speak his mind without fear of censorship or discipline. Similarly, one year after he led the counterspeech to the racist poster and a year before being elected student body president, Rossie Turman reaffirmed his support for A.S.U.'s policies supporting free speech, precisely because those policies protected his right to strongly express his own views.84 In the same year, a militant African-American student, Ashahed Triche, expressed his more radical views on race relations in a regular column of the campus newspaper, regularly offending white readers. Though some of the offended readers engaged in their own counterspeech and even recommended that the newspaper drop his column, 85 he continued to express his provocative views free from censorship. A campus policy that prohibited offensive, racially hostile speech presumably would have bottled up these emerging African-American speakers along with their white counterparts.86 Perhaps the result of such a policy would be a kinder, gentler campus, but these African-American students were willing to sacrifice subtlety in their speech to draw attention to their perspectives. 8 A second example illustrates the pain and frustration that accompany a failure to address minority offensive speech creatively and constructively. With the permission of the university administration, the Student Union Governing Board of San Francisco State University awarded a local artist $1,500 to paint a mural on the side of the Student Union building. In commemoration of what would have been Malcolm X's sixty-ninth birthday, the ten-foot-square mural depicted Malcolm X, along with Stars of David near dollar signs, a skull and crossbones, and the words "African Blood." Many Jewish and other members of the campus community understandably regarded the mural as outrageously anti-Semitic and further evidence that multiculturalism on campus had not embraced the Jewish community. The artist and many students, including African-Americans, denied that the mural was intended to offend Jewish students; instead, they argued that it expressed a legitimate political message and had historical significance as a representation of Malcolm X's early views. On orders of the university president, workers painted over the mural, but only after dozens of riot police held back supporters of the mural, some of them weeping over the destruction of the artwork.

### Speech Codes ≠ Solve

#### Silencing speech mobilizes bigots, enhances hatred and gives them political power

Soav 16. Robby Soav, 11-9-2016, "Trump Won Because Leftist Political Correctness Inspired a Terrifying Backlash," Reason, http://reason.com/blog/2016/11/09/trump-won-because-leftist-political-corr, accessed 2-17-2017. NP

Many will say Trump won because he successfully capitalized on blue collar workers' anxieties about immigration and globalization. Others will say he won because America rejected a deeply unpopular alternative. Still others will say the country is simply racist to its core. But there's another major piece of the puzzle, and it would be a profound mistake to overlook it. Overlooking it was largely the problem, in the first place. Trump won because of a cultural issue that flies under the radar and remains stubbornly difficult to define, but is nevertheless hugely important to a great number of Americans: political correctness. More specifically, Trump won because he convinced a great number of Americans that he would destroy political correctness. I have tried to call attention to this issue for years. I have warned that political correctness actually is a problem on college campuses, where the far-left has gained institutional power and used it to punish people for saying or thinking the wrong thing. And ever since Donald Trump became a serious threat to win the GOP presidential primaries, I have warned that a lot of people, both on campus and off it, were furious about political-correctness-run-amok—so furious that they would give power to any man who stood in opposition to it. I have watched this play out on campus after campus. I have watched dissident student groups invite Milo Yiannopoulos to speak—not because they particularly agree with his views, but because he denounces censorship and undermines political correctness. I have watched students cheer his theatrics, his insulting behavior, and his narcissism solely because the enforcers of campus goodthink are outraged by it. It's not about his ideas, or policies. It's not even about him. It's about vengeance for social oppression. Trump has done to America what Yiannopoulos did to campus. This is a view Yiannopoulos shares. When I spoke with him about Trump's success months ago, he told me, "Nobody votes for Trump or likes Trump on the basis of policy positions. That's a misunderstanding of what the Trump phenomenon is." He described Trump as "an icon of irreverent resistance to political correctness." Correctly, I might add. What is political correctness? It's notoriously hard to define. I recently appeared on a panel with CNN's Sally Kohn, who described political correctness as being polite and having good manners. That's fine—it can mean different things to different people. I like manners. I like being polite. That's not what I'm talking about. The segment of the electorate who flocked to Trump because he positioned himself as "an icon of irreverent resistance to political correctness" think it means this: smug, entitled, elitist, privileged leftists jumping down the throats of ordinary folks who aren't up-to-date on the latest requirements of progressive society. Example: A lot of people think there are only two genders—boy and girl. Maybe they're wrong. Maybe they should change that view. Maybe it's insensitive to the trans community. Maybe it even flies in the face of modern social psychology. But people think it. Political correctness is the social force that holds them in contempt for that, or punishes them outright. If you're a leftist reading this, you probably think that's stupid. You probably can't understand why someone would get so bent out of shape about being told their words are hurtful. You probably think it's not a big deal and these people need to get over themselves. Who's the delicate snowflake now, huh? you're probably thinking. I'm telling you: your failure to acknowledge this miscalculation and adjust your approach has delivered the country to Trump. There's a related problem: the boy-who-cried-wolf situation. I was happy to see a few liberals, like Bill Maher, owning up to it. Maher admitted during a recent show that he was wrong to treat George Bush, Mitt Romney, and John McCain like they were apocalyptic threats to the nation: it robbed him of the ability to treat Trump more seriously. The left said McCain was a racist supported by racists, it said Romney was a racist supported by racists, but when an actually racist Republican came along—and racists cheered him—it had lost its ability to credibly make that accusation. This is akin to the political-correctness-run-amok problem: both are examples of the left's horrible over-reach during the Obama years. The leftist drive to enforce a progressive social vision was relentless, and it happened too fast. I don't say this because I'm opposed to that vision—like most members of the under-30 crowd, I have no problem with gender neutral pronouns—I say this because it inspired a backlash that gave us Trump. My liberal critics rolled their eyes when I complained about political correctness. I hope they see things a little more clearly now. The left sorted everyone into identity groups and then told the people in the poorly-educated-white-male identity group that that's the only bad one. It mocked the members of this group mercilessly. It punished them for not being woke enough. It called them racists. It said their video games were sexist. It deployed Lena Dunham to tell them how horrible they were. Lena Dunham! I warned that political-correctness-run-amok and liberal overreach would lead to a counter-revolution if unchecked. That counter-revolution just happened. There is a cost to depriving people of the freedom (in both the legal and social senses) to speak their mind. The presidency just went to the guy whose main qualification, according to his supporters, is that he isn't afraid to speak his.

#### Punishment by administrators doesn’t change attitudes – policies are applied unevenly, and it just makes hate more appealing and persuasive – Britain proves

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

Parts II and III of this Article emphasized the principled reasons, arising from first amendment theory, for concluding that racist speech should receive the same protection as other offensive speech. This con- clusion also is supported by pragmatic or strategic considerations con- cerning the efficacious pursuit of equality goals. Not only would rules censoring racist speech fail to reduce racial bias, but they might even undermine that goal. First, there is no persuasive psychological evidence that punishment for name-calling changes deeply held attitudes. To the contrary, psychological studies show that censored speech becomes more appealing and persuasive to many listeners merely by virtue of the censorship.358 Nor is there any empirical evidence, from the countries that do out- law racist speech, that censorship is an effective means to counter racism. For example, Great Britain began to prohibit racist defamation in 1965.359 A quarter century later, this law has had no discernible adverse impact on the National Front and other neo-Nazi groups active in Brit- ain.360 As discussed above,361 it is impossible to draw narrow regulations that precisely specify the particular words and contexts that should lead to sanctions. Fact-bound determinations are required. For this reason, authorities have great discretion in determining precisely which speakers and which words to punish. Consequently, even vicious racist epithets have gone unpunished under the British law.362 Moreover, even if actual or threatened enforcement of the law has deterred some overt racist in- sults, that enforcement has had no effect on more subtle, but nevertheless clear, signals of racism.363 Some observers believe that racism is even more pervasive in Britain than in the United States.364

#### Censorship turns bigots into martyrs, glorifying rather than undermining their beliefs.

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A second reason why censorship of racist speech actually may subvert, rather than promote, the goal of eradicating racism is that such censorship measures often have the effect of glorifying racist speakers. Efforts at suppression result in racist speakers receiving attention and publicity which they otherwise would not have garnered. As previously noted, psychological studies reveal that whenever the government attempts to censor speech, the censored speech-for that very reason- becomes more appealing to many people.388 Still worse, when pitted against the government, racist speakers may appear as martyrs or even heroes. Advocates of hate speech regulations do not seem to realize that their own attempts to suppress speech increase public interest in the ideas they are trying to stamp out. Thus, Professor Lawrence wrongly sug- gests that the ACLU's defense of hatemongers' free speech rights "makes heroes out of bigots";389 in actuality, experience demonstrates that it is the attempt to suppress racist speech that has this effect, not the attempt to protect such speech.390

#### Regulating hate speech means it comes back in more subtle and virulent forms where it’s harder to challenge.

Nadine Strossen 90. Regulating Racist Speech on Campus: A Modest Proposal?. www.jstor.org/stable/pdf/1372555.pdf. Duke Law Journal, Vol. 1990, No. 3, Frontiers of Legal Thought II. The New First Amendment (Jun., 1990), pp. 484-573. Duke University School of Law. NP 2/23/17.

There is a third reason why laws that proscribe racist speech could well undermine goals of reducing bigotry. As Professor Lawrence rec nizes, given the overriding importance of free speech in our society, any speech regulation must be narrowly drafted.391 Therefore, it can affect only the most blatant, crudest forms of racism. The more subtle, and hence potentially more invidious, racist expressions will survive. Virtu- ally all would agree that no law could possibly eliminate all racist speech, let alone racism itself. If the marketplace of ideas cannot be trusted to winnow out the hateful, then there is no reason to believe that censorship will do so. The most it could possibly achieve would be to drive some racist thought and expression underground, where it would be more diffi- cult to respond to such speech and the underlying attitudes it expresses.392 The British experience confirms this prediction.393 The positive effect of racist speech-in terms of making society aware of and mobilizing its opposition to the evils of racism-are illus- trated by the wave of campus racist incidents now under discussion. Ugly and abominable as these expressions are, they undoubtedly have had the beneficial result of raising public consciousness about the under- lying societal problem of racism. If these expressions had been chilled by virtue of university sanctions, then it is doubtful that there would be such widespread discussion on campuses, let alone more generally, about the real problem of racism.394 Consequently, society would be less mobilized to attack this problem. Past experience confirms that the public airing of racist and other forms of hate speech catalyzes communal efforts to redress the bigotry that underlies such expression and to stave off any dis- criminatory conduct that might follow from it.3

#### T - Speech codes mask the reality of hatred and prevent more robust solutions

ACLU. Hate Speech on Campus. https://www.aclu.org/other/hate-speech-campus

Where racist, sexist and homophobic speech is concerned, the ACLU believes that more speech -- not less -- is the best revenge. This is particularly true at universities, whose mission is to facilitate learning through open debate and study, and to enlighten. Speech codes are not the way to go on campuses, where all views are entitled to be heard, explored, supported or refuted. Besides, when hate is out in the open, people can see the problem. Then they can organize effectively to counter bad attitudes, possibly change them, and forge solidarity against the forces of intolerance. College administrators may find speech codes attractive as a quick fix, but as one critic put it: "Verbal purity is not social change." Codes that punish bigoted speech treat only the symptom: The problem itself is bigotry. The ACLU believes that **instead of opting for gestures that only appear to cure the disease, universities have to do the hard work** of recruitment to increase faculty and student diversity; counseling to raise awareness about bigotry and its history, and changing curricula to institutionalize more inclusive approaches to all subject matter.

# Ks

## Afropess

#### Perm, do both: adopt the kritiks anti-state orientation while understanding that that certain actions can improve the material safety of blacks even if the system of anti-blackness can’t be removed.

#### Wilderson agrees with police reform- it should be combined with the alt.

Wilderson 16 (Frank B. III, interviewed by Samira Spatzek and Paula von Gleich, “‘The Inside-Outside of Civil Society’: An Interview with Frank B. Wilderson, III.” Black Studies Papers, 2.1 (2016): 4–22, https://www.academia.edu/26032053/\_The\_Inside-Outside\_of\_Civil\_Society\_An\_Interview\_with\_Frank\_B.\_Wilderson\_III) OS

The question is, can Black political organizing in Ferguson and Balti-more and these places catch up with that, because unfortunately, we have a problem in that the country is so much more of a police state than it has ever been and you know that just by watching television. When I was in school, if you liked the American flag, if you liked the police, you didn’t have any friends. Now, I find young college students are very slow to say that they hate America, very slow to say that they hate the police. What we’re trying to do now is to infuse an antagonistic orientation in Black people who are white-collar people in college so that their intellectual skills can be enhanced by the orientation that is felt by Black people in the ghetto. If this doesn’t happen they run risk of being anointed and ap-pointed (by the power structure) to manage the anger of Black people in the street, rather than relate to that anger. So that’s a hurdle that we have to overcome. You know, I’ve been doing political education workshops for Black Lives Matter in New York and Los Angeles, and probably will do more in Chicago. And what I hope to have people do workshop exercises around is this concept that I have called “Two Trains Running (Side by Side).” By that I mean, you can do your political organizing that will help us get relief from police brutality right now. We need that. We need that. But that work that we do should be seen as puny in terms of its philosophical and theoretical orientation so that we can educate ourselves politically to be against the police as an institution and against the United States as a country, even while we are working to reform police practices, because we do not have the strength right now that we had in the 1960s and 1970s to act in the way the Black Liberation Army did, or Baader-Meinhof, we do not have the strength to act in the revolutionary mode, but that lack of strength, that lack of capacity, should not contaminate our orientation. We should not feel that we have to accept the existence of police even if we’re working in reformist measures politically. Hopefully this idea of two trains running will pick up. Black Lives Matter has done a great job in opening up a new Black political organizing space. That’s great. Now let’s use that space for an educational project that is soundly anti-American, and soundly anti-police even if tactically, we have to work for police reforms.

#### Try or die for the aff – no alt solvency—the K can only explain antagonism but it can’t cure it.

Wilderson 10 Percy Howard, 7-9-2010, "Frank B. Wilderson, “Wallowing in the contradictions”, Part 1," a necessary angel, https://percy3.wordpress.com/2010/07/09/frank-b-wilderson-%E2%80%9Cwallowing-in-the-contradictions%E2%80%9D-part-1/, accessed 7-25-2016. NP 7/25/16.

FW This is a big question, too big for a concise answer—I think I take about thirty to forty pages to try and get my head around this in the book. But the key to the answer lies in the concept of “contemporaries.” Fanon rather painfully and meticulously shows us how the human race is a community of “contemporaries.” In addition, this community vouchsafes its coherence (it knows its borders) through the presence of Blacks. If Blacks became part of the human community then the concept of “contemporaries” would have no outside; and if it had no outside it could have no inside. Lacan assumes the category and thus he imagines the analysand’s problem in terms of how to live without neurosis among ones contemporaries. Fanon interrogates the category itself. For Lacan the analysands suffer psychically due to problems extant within the paradigm of contemporaries. For Fanon, the analysand suffers due to the existence of the contemporaries themselves and the fact that s/he is a stimulus for anxiety for those who have contemporaries. Now, a contemporary’s struggles are conflictual—that is to say, they can be resolved because they are problems that are of- and in the world. But a Blacks problems are the stuff of antagonisms: struggles that cannot be resolved between parties but can only be resolved through the obliteration of one or both of the parties. We are faced—when dealing with the Black—with a set of psychic problems that cannot be resolved through any form of symbolic intervention such as psychoanalysis—though addressing them psychoanalytically we can begin to explain the antagonism (as I have done in my book, and as Fanon does), but it won’t lead us to a cure.

#### Permutation – embrace freedom of speech to open up spaces of resistance – only with the perm can your alt and criticisms of the state become possible

Friedersdorf 15, Conor. (CONOR FRIEDERSDORF is a staff writer at The Atlantic, where he focuses on politics and national affairs. He lives in Venice, California, and is the founding editor of The Best of Journalism, a newsletter devoted to exceptional nonfiction.) The Glaring Evidence That Free Speech Is Threatened on Campus. <http://www.theatlantic.com/politics/archive/2016/03/the-glaring-evidence-that-free-speech-is-threatened-on-campus/471825/> Mar 4, 2015.

The United States proudly maintains a strongly exceptionalist tradition with respect to the meaning and scope of the First Amendment. Whether one dates this tradition to New York Times Co. v. Sullivan1 or to Brandenburg v. Ohio, 2 in the contemporary United States, the government generally lacks power to proscribe speech based on either its content or viewpoint. Criticism of the government enjoys robust protection, and even speech calling for its violent overthrow enjoys constitutional protection absent a clear and present danger of imminent lawlessness.3 The Supreme Court has explained that: the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.4 This rule applies because of “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”5

#### Perm – vote aff to embrace my conception of identity as co-constituted by experience and action. Your essentialist and reductive understanding of black identity erases particularity and deprives the black community of agency.

Glaude 7, Eddie S. (Eddie S. Glaude Jr. is the chair of the Center for African-American Studies and the William S. Tod Professor of Religion and African-American Studies at Princeton University.) In a Shade of Blue : Pragmatism and the Politics of Black America. University of Chicago Press, 2007. EBSCOhost. (78-79) NP 3/3/17.

In my view, three difficulties—descriptive, theoretical, and existential—attend such accounts. The descriptive problematic involves the plotline of the story. I am reminded here of James Baldwin and Ralph Ellison’s criti-cisms of Richard Wright. Both worried that Wright’s representations of black life betrayed the complexity of African American existence. The same can be said of stories of African American experience that are mainly about liberation and presuppose a subject in constant struggle. There is much more to our living than simply resisting white supremacy. More-over, the singular focus often results in a relatively coherent account in which the internal fissures of black communities are obscured. Suffering and resistance then subordinate all other considerations—even the dif-ferential experience of that suffering and the different aims of resistance. The theoretical problematic refers to the Christian dimension of the problem of being both black and Christian. Like Anderson, I worry that God talk among black theologians, at least in their worst moments, functions merely as a source of the strenuous mood, serving simply to justify and sanctify a particular political orientation—even though it is precisely in our relation to God and His relation to us that we resist oppression.24.Lastly, the existential problematic again entails a simplification of the complexity of African American lives. The existential involves how to live, how to hope, and how to love. But if our lives are reduced simply to struggle and our stories presume an understanding of black agency as always already political, then the various ways we have come to love and hope are cast into the shadows as we obsess about politics, narrowly un-derstood, and as History orients us retrospectively instead of prospec-tively. We end up, despite our best intentions, ignoring the sheer joy of black life and unwittingly reducing our capacity to reflect and act in light of the hardships of our actual lives. Perhaps, more importantly, “our abil-ity to make delicate distinctions” is lost as History settles beforehand the difficult existential questions “Who am I?” “How should I live?” and “What should I do?”

The K is an abstraction that erases material and lived experiences of blacks – your attempt to find an ontological common denominator ignores how blacks both shape and are shaped by the particularity of their circumstances

#### Ontological blackness defaces black subjectivity under the cult of black heroic genius, creating a relationship of violent autoimmunity to internal difference.

Anderson 95. Victor, Oberlin Theological School Professor of Ethics and Society at Vanderbilt University Divinity School, Professor in the Program in African American and Diaspora Studies and Religious Studies in the College of Arts and Sciences at Vanderbilt University, Beyond Ontological Blackness: An Essay on African American Religious and Cultural Criticism.

The aim of African American cultural and religious criticism is to unmask the ways that categorical racism and white racial ideology subjugate (deface) black presence in North Atlantic culture under the totality of European genius. I contend that this same iconoclastic disposition also ought to expose the ways that ontological blackness subjugates (defaces) black subjectivity under the cult of black heroic genius. In its apologetic function, ontological blackness mirrors categorical racism. It represents categorical ways of transferring negative qualities associated with the group onto others within the group. It creates essential criteria for defining insiders and outsiders within the group. It subjugates the creative, expressive activities of blacks (whether in performance arts or literature) under the symbolism of black heroic genius. In this case, black subjectivity has internal meaning insofar as it represents the genius of the group. It makes race identity a totality that subordinates and orders internal differences among blacks, so that gender, social standing, and sexual orientations are secondary to racial identity. Pressing beyond ontological blackness requires African American religious critics to subvert every racial discourse, including their own, that would bind black subjectivity to the totality of racial identity. But it also requires critics to advance possibilities of cultural transcendence from the binary determinants of racial apologetics. Therefore, African American cultural and religious criticism can remain open to the self-deprecating aspects of black culture as well as to the cultural fulfillment of black culture.

#### The K’s ontological claims are epistemologically flawed – black identity can not be fixed – it changes in relation to complexity of particular contexts.

Glaude 7, Eddie S. (Eddie S. Glaude Jr. is the chair of the Center for African-American Studies and the William S. Tod Professor of Religion and African-American Studies at Princeton University.) In a Shade of Blue : Pragmatism and the Politics of Black America. University of Chicago Press, 2007. EBSCOhost. (8) NP 3/4/17.

This book attempts to show that pragmatism can help address some of the more challenging dimensions of contemporary African American politics. But I maintain that it first ought to undergo a reconstruction of sorts. Pragmatism must be made to sing the blues. In chapter 1,I argue that, contrary to standard accounts, John Dewey’s reconstruction of moral experience insists on the tragic dimension of our moral lives: that we are consistently confronted with competing values that often require that some good or value is butchered. I then put Dewey in conversation with one of America’s greatest writers, Toni Morrison. Dewey indeed has re-sources capable of addressing what Stanley Cavell describes as the work ofmourning,18but my reading of Morrison aims to reconstruct those re-sources in light of the racialized experiences that haunt American life. What might it mean to think of the tragic in the context of those black persons forced to forge a self amid the absurdities of a society still fundamentally committed to racist practices? I suggest that Morrison’s novel exemplifies what it means to hold a pragmatic view of the tragic that takes seriously the often brutal realities of white supremacy. Morrison, then, teaches Dewey a lesson about race, American democracy, and the often tragic choices imposed on this country’s darker citizens. The chapter thus opens the way for a more sustained encounter between pragmatism as I understand it and African American political life. Chapters 2, 3,and 4examine how pragmatism might aid us in rethinking the various ways appeals to black identity, history, and agency impact the form and content of African American political activity. Too often such appeals settle political matters beforehand. Black history, for some, constitutes a reservoir of meaning that predetermines our orientation to problems, irrespective of their particulars, and black agency is imagined from the start as bound up with an emancipatory politics. When identity is determined by way of reference to a fixed racial self, the complexity of African American life is denied. Moreover, the actual moral dilemmas African Americans face are reduced to a crude racial calculus in which the answers are somehow genetically or culturally encoded. My aim in these chapters is not to deny the viability of black identity talk, appeals to black history, or something like black agency. Instead, I bring my pragmatic commitments to bear on these notions in order to open up ways in which we might reimagine African American politics for the twenty-first century. In chapter 2,for example, I maintain that we have approached the issue of black identity in the wrong way: that it is not some fixed and unchanging point of reference that determines, in advance of our actions, who we are. Rather, our identities turn out to be the products of efforts to dispose of problematic situations. This pragmatic approach gets us past some of the more troublesome dimensions of identity politics precisely because it locates identity formation in the messiness of our living and the problems we confront.

### A2 Cruel Optimism

#### The absence of hope is just as violent – radical individual refusal props up structural white supremacy – political change is possible now but individual pessimism and withdrawal is lapped up by system

Rana ‘16 (Dr. Aziz, Professor of Law @ Cornell Law School, Ph.D (Government) from Harvard University, “Race and the American Creed: Recovering black radicalism.” *N+1* magazine, Issue 24: Winter 2016, <https://nplusonemag.com/issue-24/politics/race-and-the-american-creed/>)

Given the hollowness of the creedal imagination, the growing radicalism of a new generation of activists feels inevitable. In everything from calls for reparations to attacks on the Confederate flag to arguments about mass incarceration, these activists are reconnecting to the black radical tradition—opening doors that have been closed for decades. This is a profound development, particularly for activists’ reengagement with a politics of national disavowal and revival of arguments against the carceral state. In many ways, the figure who has come to embody both positions in the current discourse is Ta-Nehisi Coates, whose political disillusionment is best exemplified in his stark statements to his son (“We are captured, brother, surrounded by the majoritarian bandits of America”). But one problem with Coates’s version of black radicalism is that at times—more in his book *Between the World and Me* than in his political interventions in the *Atlantic*—he depicts disillusionment in individual terms. That book in particular conveys little of the communities of solidarity African Americans belong to, or of how things like reparations ground a shared social vision of the future. Instead, Coates combines radical rejection of polite society with a personal notion of resistance, in which “struggle” is presented as the individual’s ethical refusal to comply with the totalizing injustice of racism and its structures. What is missing is a *collective* sense of action, let alone of the possibility of transformation through such action. We are left in the world of either overwhelming and oppressive institutions or isolated individuals of conscience. The force of *Between the World and Me* can be too easily contained. Precisely because Coates imagines isolated individuals in the face of totalizing oppression, one can walk away from the book feeling that real change—rather than just window dressing—is out of reach. And for this reason, the book’s sensibility can have the odd effect of buttressing the very institutions it condemns. This form of creedal rejection can be neutered publicly through praise: treated by those like David Brooks as “hard truths,” but truths that by their very profundity may be too difficult to overcome. The consequence is a mainstream (especially liberal) culture that laps up the attack and even accepts the structural dimension of race at the same time that it abandons fundamental racial reform as ultimately hopeless. What we are witnessing is one way that defenders of the creed are coming to grips with its internal crisis. Perhaps the problem is not with the creed at all, but with race itself—an issue so fraught and overwhelming as to be impossible to address adequately. Even the failures of the creed therefore speak to the heroism of the American project—which takes as its goal a truly Sisyphean task. In this way, racial pessimism can be absorbed into the narrative, and actually prop up a weakened creed. If getting from here to there is more or less beyond collective effort, and all we have is a position of ethical resistance and noble struggle, then political elites can feel guilt and torment at the continuing force of racial subordination. But they do not need to believe that their own practices have much effect, let alone make matters worse. Since this “union may never be perfect,” to use Obama’s phrase, maybe all that can be expected is to muddle along as best we can. THE HOPE FOR BLACK RADICALISM today is that the present mood can develop into an account of state, economy, and society strong enough to counter the creedal narrative. Recent initiatives, like Campaign Zero, have put forward valuable concrete ideas for police reform—but these demands must be combined with a more expansive and prefigurative politics. Activists must do no less than imagine and present their policy prescriptions, as did earlier generations, as a competing ideal of liberation, solidarity, and renewal. Without a comparable ideal, it is incredibly difficult to counter even a weakened creedal story, let alone the patchwork of reactive policy initiatives proposed by liberal centrists—such as body cameras, a handful of high-profile prosecutions, and sensitivity training for officers. What tangible changes, if achieved in the real world, would make it difficult for the existing social order to reproduce itself and provide supporters a fighting ideal? In the ‘60s, for everyone from Bayard Rustin and A. Philip Randolph to Huey Newton, the solution lay in reform tools that had the same irruptive capacities as the 19th-century call for an eight-hour day. Full employment, a guaranteed income: these were—and are—policies that would dramatically reshape the authority and independence that marginalized groups have over their economic lives. In calling for these changes, black radicals all linked race to capitalism and embraced economic democracy as a defining aspirational commitment. They did not fall into the old labor presumption that race could be reduced to a problem of class (revisited in the debates around the Bernie Sanders campaign). But they did recognize—as rural ex-slaves had all the way back in 1865—that black freedom would require a social transformation that would uproot American political economy itself. Prison abolition is another irruptive reform tool. What black radicals saw at a more incipient stage is today full-blown: the penal system is not exclusively a matter of race but also the way that the American state deals with endemic problems of poverty. Against the backdrop of joblessness and intense structural inequality, prison is perhaps the central institution for the management of the poor: 70 percent of those in state prisons don’t have high school diplomas. Ending the carceral state not only challenges racial subordination but undermines the way that the state has evolved to contain economic dependency and dispossession. And as for internationalism, this was not just a political accessory for black radicals, but went to the very core of their notions of community. According to the black anticolonial vision, as long as people of color continued to believe powerful white conationals somehow shared their interests, their movements would always face co-optation and eventual defeat. African Americans, they argued, had to form political alliances in ways that cut against ingrained and nationalist presumptions. This is what motivated the Panthers to demand that “reparations should be made to oppressed people throughout the world, and we pledge ourselves to take the wealth of this country and make it available” for colonized communities globally. The feasibility of this call is less interesting to me than the underlying sentiment: a belief that national wealth belongs to marginalized groups regardless of citizenship. Such internationalism speaks to the present need to rebuild black and brown solidarities, especially in a context in which conservative elites pit these groups against each other, either through patriotic invocations of American global power or attacks at home on immigrant workers. It requires challenging American security imperatives in the “war on terror” and critiquing racial logics that have recast nonwhite communities (here Muslims and those of Arab descent) as suspect populations subject to systematic surveillance. More broadly, it means confronting how economic and state structures govern both African Americans and immigrants from the Global South. In today’s New Jim Crow, it is nonwhite immigrants whose labor experience most closely mirrors that of African Americans under the old Jim Crow. Undocumented immigrants in particular often find themselves engaged in hard and exploitative work, with no legal recourse, under the continuous threat of legally sanctioned terror. More than 400,000 people annually cycle through the immigrant prison system. Penal and employment structures interlock to enforce the invisibility and powerlessness of nonwhite communities working on the farm or in the factory under dependent conditions. Like African Americans, immigrants from the Global South, especially from Central and Latin America, can be thought of as shaped historically by the forces of European empire; they also share many of the same basic interests in fundamental social transformation. This link is crucial: connecting the immigrant and African American freedom struggles cuts against false assumptions that black communities are either alone or have more in common with those in economic and political power than they do with other marginalized groups. And it yet again provides a way to join calls to end the carceral state with calls for fundamental economic change. Now is the time to reassert the full tradition of revolutionary reform: to argue, as Martin Luther King did fifty years ago, for “a radical restructuring of the architecture of American society.” Such a restructuring requires that we break from fantasies about national redemption. But it also means extending arguments about racism into arguments about American power and political economy. This move is fundamental because it provides an alternative way to imagine collective solidarity and to think of black freedom as freedom for all—able to contest the creedal story on its own supposed ground. Only then, by embracing the full scope of the radical tradition, will the crisis of the creed offer a path to something fundamentally new.

### A2 Cruel Optimism/Progress Narrative

#### Hope is distinct from progress. The embrace of hope is useful when deployed by people of color – it’s not equivelant to white optimism, but a way to find meaning in the present.

Leonardo ‘11 (Zeus, Prof. of Cultural Studies @ Graduate School of Education, U. of California, Berkeley, “After the Glow: Race ambivalence and other educational prognoses,” Educational Philosophy and Theory, Vol. 43.6, pp. 693-695)

Ultimately, a post-race perspective enables educators to distinguish between hope and optimism. Whereas color-blindness is usually associated with a white mindset or lived experience, post-race is a theory of color, which does not mean that scholars of color are always its author. A bright student of mine once suggested that ‘hope is white’.8 By this she meant that whites exhibit an abundance of hope concerning racial progress when compared to a rather pessimistic black prognosis of the same problem. I took it to mean that even hope is racial and subject to its rationality. It struck me as insightful and I would like to end this essay with a commentary on hope and optimism. I would refine the insight this way: while whites are optimistic about race they are not hopeful, whereas people of color are precisely the opposite, hopeful but pessimistic. When it comes to race progress, whites show much optimism because small increments of improvement are taken as signs of white tolerance. It produces the psychological advantage of focusing on ‘how far we have come’ instead of the more loaded ‘how far we still have to go’. For if whites compare present inequalities with past cruelties, not only do black lives look that much better but white tolerance looks that much greater. Whereas Gramsci (1971) once distinguished between the ‘pessimism of the intellect and the optimism of the will’, whites show an optimism of the intellect and pessimism of the will. In short, we cannot equate white optimism with real hope, which takes a certain will that whites have shown themselves to lack. They are prone to exaggerate racial progress because focusing on the continuing significance of racism indicts their collective inability to end the problem once and for all. They feel good without necessarily having to make good. For all the optimism they express toward racial progress, they lack hope in its actional sense. For whites, hope is abstract. This is hardly post-racial. In contrast, if people of color have represented anything in the history of race relations, it is hope. It is one of the few ‘advantages’ that people of color have over whites. **Hope is** built into the experience of people of color as an ontological part of their being (see Freire, 1993). How else does one explain their ability to withstand centuries of racial oppression? It is premised on the hope that it will one day end despite the fact that they are disappointed by whites’ ability to converge racial progress with their own interests (Bell, 1992). Time and time again, people of color cling on to hope as the force that prevents them from despair and resignation. It is historical and allows them to see setbacks as opportunities for defiance. In fact, they project hope onto whites more than they sometimes deserve, a surplus hopefulness that whites underappreciate because they would rather emphasize people of color’s animosity over their grace. We have seen Barack Obama’s campaign was built on the audacity of hope and Reverend Jesse Jackson’s battlecry was ‘keep hope alive’. Even Derrick Bell’s apparent bleakness is contradicted by his early endorsement of Obama for president, as evidenced by his public support of him many months preceding Obama’s victory over his then favored opponent, Senator Clinton.9 Hope is what propelled Bell to support change. As Obama accepts his Nobel Peace Prize, we recognize that it was made possible by his going to war with a unilateral decision-making process turned into a science by eight years under the Bush regime. As a concrete possibility, peace will be approached by people of color through a critical, honest appraisal of racialization. Their hope attenuates the otherwise realistic pessimism they feel about race relations, which may keep them bitter. A language of hope is concrete for people of color because it is not just a projected ideal but a way to exist in the present. It is a dream, not a fantasy. It is not an abstract feeling but a concrete emotion, or better yet, an emotional praxis (Chubbuck & Zembylas, 2008).

Your narrative is a link – you blame minorities rather than oppressors; presenting progress as impossible paints racists’ actions as having no effect meaning we can’t hold them responsible – you hold minorities accountable for their reaction to oppression rather than the oppressor for failing to dismantle racist structures.

#### The absence of hope is just as violent – radical individual refusal props up structural white supremacy – political change is possible now but individual pessimism and withdrawal is lapped up by system

Rana ‘16 (Dr. Aziz, Professor of Law @ Cornell Law School, Ph.D (Government) from Harvard University, “Race and the American Creed: Recovering black radicalism.” *N+1* magazine, Issue 24: Winter 2016, <https://nplusonemag.com/issue-24/politics/race-and-the-american-creed/>)

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Precisely because Coates imagines isolated individuals in the face of totalizing oppression, one can walk away from the book feeling that real change—rather than just window dressing—is out of reach. And for this reason, the book’s sensibility can have the odd effect of buttressing the very institutions it condemns. This form of creedal rejection can be neutered publicly through praise: treated by those like David Brooks as “hard truths,” but truths that by their very profundity may be too difficult to overcome. The consequence is a mainstream (especially liberal) culture that laps up the attack and even accepts the structural dimension of race at the same time that it abandons fundamental racial reform as ultimately hopeless. What we are witnessing is one way that defenders of the creed are coming to grips with its internal crisis. Perhaps the problem is not with the creed at all, but with race itself—an issue so fraught and overwhelming as to be impossible to address adequately. Even the failures of the creed therefore speak to the heroism of the American project—which takes as its goal a truly Sisyphean task. In this way, racial pessimism can be absorbed into the narrative, and actually prop up a weakened creed. If getting from here to there is more or less beyond collective effort, and all we have is a position of ethical resistance and noble struggle, then political elites can feel guilt and torment at the continuing force of racial subordination. But they do not need to believe that their own practices have much effect, let alone make matters worse. Since this “union may never be perfect,” to use Obama’s phrase, maybe all that can be expected is to muddle along as best we can. THE HOPE FOR BLACK RADICALISM today is that the present mood can develop into an account of state, economy, and society strong enough to counter the creedal narrative. Recent initiatives, like Campaign Zero, have put forward valuable concrete ideas for police reform—but these demands must be combined with a more expansive and prefigurative politics. Activists must do no less than imagine and present their policy prescriptions, as did earlier generations, as a competing ideal of liberation, solidarity, and renewal. Without a comparable ideal, it is incredibly difficult to counter even a weakened creedal story, let alone the patchwork of reactive policy initiatives proposed by liberal centrists—such as body cameras, a handful of high-profile prosecutions, and sensitivity training for officers. What tangible changes, if achieved in the real world, would make it difficult for the existing social order to reproduce itself and provide supporters a fighting ideal? In the ‘60s, for everyone from Bayard Rustin and A. Philip Randolph to Huey Newton, the solution lay in reform tools that had the same irruptive capacities as the 19th-century call for an eight-hour day. Full employment, a guaranteed income: these were—and are—policies that would dramatically reshape the authority and independence that marginalized groups have over their economic lives. In calling for these changes, black radicals all linked race to capitalism and embraced economic democracy as a defining aspirational commitment. They did not fall into the old labor presumption that race could be reduced to a problem of class (revisited in the debates around the Bernie Sanders campaign). But they did recognize—as rural ex-slaves had all the way back in 1865—that black freedom would require a social transformation that would uproot American political economy itself. Prison abolition is another irruptive reform tool. What black radicals saw at a more incipient stage is today full-blown: the penal system is not exclusively a matter of race but also the way that the American state deals with endemic problems of poverty. Against the backdrop of joblessness and intense structural inequality, prison is perhaps the central institution for the management of the poor: 70 percent of those in state prisons don’t have high school diplomas. Ending the carceral state not only challenges racial subordination but undermines the way that the state has evolved to contain economic dependency and dispossession. And as for internationalism, this was not just a political accessory for black radicals, but went to the very core of their notions of community. According to the black anticolonial vision, as long as people of color continued to believe powerful white conationals somehow shared their interests, their movements would always face co-optation and eventual defeat. African Americans, they argued, had to form political alliances in ways that cut against ingrained and nationalist presumptions. This is what motivated the Panthers to demand that “reparations should be made to oppressed people throughout the world, and we pledge ourselves to take the wealth of this country and make it available” for colonized communities globally. The feasibility of this call is less interesting to me than the underlying sentiment: a belief that national wealth belongs to marginalized groups regardless of citizenship. Such internationalism speaks to the present need to rebuild black and brown solidarities, especially in a context in which conservative elites pit these groups against each other, either through patriotic invocations of American global power or attacks at home on immigrant workers. It requires challenging American security imperatives in the “war on terror” and critiquing racial logics that have recast nonwhite communities (here Muslims and those of Arab descent) as suspect populations subject to systematic surveillance. More broadly, it means confronting how economic and state structures govern both African Americans and immigrants from the Global South. In today’s New Jim Crow, it is nonwhite immigrants whose labor experience most closely mirrors that of African Americans under the old Jim Crow. Undocumented immigrants in particular often find themselves engaged in hard and exploitative work, with no legal recourse, under the continuous threat of legally sanctioned terror. More than 400,000 people annually cycle through the immigrant prison system. Penal and employment structures interlock to enforce the invisibility and powerlessness of nonwhite communities working on the farm or in the factory under dependent conditions. Like African Americans, immigrants from the Global South, especially from Central and Latin America, can be thought of as shaped historically by the forces of European empire; they also share many of the same basic interests in fundamental social transformation. This link is crucial: connecting the immigrant and African American freedom struggles cuts against false assumptions that black communities are either alone or have more in common with those in economic and political power than they do with other marginalized groups. And it yet again provides a way to join calls to end the carceral state with calls for fundamental economic change. Now is the time to reassert the full tradition of revolutionary reform: to argue, as Martin Luther King did fifty years ago, for “a radical restructuring of the architecture of American society.” Such a restructuring requires that we break from fantasies about national redemption. But it also means extending arguments about racism into arguments about American power and political economy. This move is fundamental because it provides an alternative way to imagine collective solidarity and to think of black freedom as freedom for all—able to contest the creedal story on its own supposed ground. Only then, by embracing the full scope of the radical tradition, will the crisis of the creed offer a path to something.

### A2 History

#### Subjects are not reducible to power or domination – your method essentializes lived experiences and ignores the ways in which subjects reduce categorization

Ehlers 12, Nadine. Racial Imperatives : Discipline, Performativity, and Struggles against Subjection. (, Professor, School of Social Sciences, Media, and Communication Faculty of Law, Humanities, and Arts University of Wollongong,) Bloomington, IN, US: Indiana University Press, 2012. ProQuest ebrary. Web. 13 March 2017. Copyright © 2012. Indiana University Press. All rights reserved. Pg 9-12. NP 3/13/17.

In analyzing the triangulated operations of racial discipline, performativity, and passing, my scope is limited to considering the formation of race along the black/white binary axis. In doing so, I am conscious of the danger of reinscribing an artificial opposition that has been set up between these identity sites. Yet it is precisely the continuing force that this binarism yields and its ongoing currency in the contemporary U.S. racial landscape that motivates this concentration. This book engages scholarship that questions the prevailing power of the black/white binary by illuminating the complexities of its functionings, and by identifying its points of weakness that might be exploited to disturb its political centrality and power. ∏ In exploring the binary, I use the term ‘whiteness’ to simultaneously encompass both the process of being white and a discursive systemic social power supported by practices and beliefs. I use the term in a broad sense, in a similar way to my generalized use of the terms ‘black’ and ‘blackness.’ While I deploy these terms for analytic convenience, the study pivots on the desire to make dear the false homogeneity of subjects that are denoted by these terms and the arbitrariness of race per se. In the same moment that I employ these terms as critical tools of analysis, then, I hope to expose the mechanisms of their production and mark possibilities for their rearticulation. The final portion of this study is concerned with examining what forms of agency and resistance are possible within the context of this binary construction of black and white identities. Guiding this analysis is the question of how individuals struggle against subjection and how racial norms might be recited in new directions, given that the coercive demands of discipline and performative constraints make it seem like race is an insurmountable limit or closed system. That race operates as a limit appears particularly so for black subjects. For despite the fact that all subjects are produced and positioned within and by the discursive formations of race, the impact of that positioning and what it means for experience is markedly different. Black subjects are situated within an antiblack context where the black body/self continues to be torn asunder within the relations of civil society. This means that, as Yancy (2008, 134 n. n) insists, “ the capacity to imagine otherwise is seriously truncated by ideological and material forces that are systematically linked to the history of white racism!' A number of scholars have examined these realities and advanced critical accounts of what they identify as the resulting condition of black existence. David Marriot, for instance, argues that “the occult presence of racial slavery” continues to haunt our political and social imagination: “nowhere, but nevertheless everywhere, a dead time which never arrives and does not stop arriving” (2007, xxi). Saidiya Hartman, in her provocative Lose Your Mother: A journey Along the Atlantic Slave Route (2007) refers to this haunting as slavery's afterlife. She insists that we do not live with the residue or legacy of slavery but, rather, that slavery lives on. It 'survives' (Sexton 2010, 15), through what Loic Wacquant (2002, 41) has identified as slavery's functional surrogates: Jim Crow, the ghetto, and the prison. For Hartman, as echoed by other scholars, slavery has yet to be undone: Black lives are still imperiled and devalued by a racial calculus and a political arithmetic that were entrenched centuries ago. This is the afterlife of slavery- skewed life chances, limited access to health and education, premature death, incarceration, and impoverishment. I, too, am the afterlife of slavery. (2007, 6) Frank B. Wilderson III, in his Red, White, and Black: Cinema and the Structures of U.S. Antagonisms (2009), powerfully frames slavery's afterlife as resulting in a form of social death for black subjects and, more than this, he argues that black subjectivity is constituted as ontological death. For Wilderson, “ the Black [is) a subject who is always already positioned as Slave” (2009, 7) in the United States, while everyone else exists as “Masters” (2009, 10 ).8 Studies of slavery's afterlife and the concept of social death have inarguably made essential contributions to understandings of race.9 The strengths of such analyses lie in the salient ways they have theorized broad social systems of racism and how they have demanded the foregrounding of suffering, pain, violence, and death. Much of this scholarship can be put or is productively in conversation with Foucault's account of biopolitics that, as I noted earlier, regulates at the level of the population. Where sovereignty 'took life and let live,' in the contemporary sphere biopolitics works to 'make live.' However, certain bodies are not in the zone of protected life, are indeed expendable and subjected to strategic deployments of sovereign power that 'make die.' It is here that Foucault positions the function of racism. It is, he argues, “primarily a way of introducing a break into the domain of life that is under power's control: the break between what must live and what must die” (2003b, 254). Thus, certain bodies/subjects are killed - or subjected to sovereign power and social death- so that others might prosper. 10 In Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America (1997), Hartman examines the 'must die' imperative of social death understood broadly as a lack of social being-but she also illuminates how, within such a context, slave “performance and other modes of practice . .. exploit[ed), and exceed[ed] the constraints of domination” (1997, 54, my emphasis). Hartman analyzes quotidian enactments of slave agency to highlight practices of “(counter)investment” (1997, 73) that produced “a reconstructed self that negates the dominant terms of identity and existence” (1997, 72). 11 She thus argues that a form of agency is possible and that, while “the conditions of domination and subjugation determine what kinds of actions are possible or effective” (1997, 54), agency is not reducible to these conditions (1997, 55).'2 The questions that I ask in this analysis travel in this direction, and aim to build on this aspect of Hartman's work. In doing so I make two key claims: first, that despite undeniable historical continuities and structural d)'namics, race is also marked by discontinuity; and second, race is constantly reworked and transformed within relations of power by subjects. 13 For Vincent Brown, a historian of slavery, ''violence, dislocation, and death actually generate politics, and consequential action by the enslaved” (2009, 1239) . He warns that focusing on an overarching condition or state potentially obscures seeing these politics. More than this, however, it risks positioning relations of power as totalizing and transhistorical, and it risks essentializing experience or the lived realities of individuals. 14 I scale down to the level of the subject to analyze both (a) how subjects are formed, and (b) how subjects – black and white alike – have struggled against conditions in ways that refuse totalizing, immutable understandings of race. This book does not seek to mark a condition or situation then, but instead takes up Brown's challenge (made within the context of studies of slavery) to pay attention to efforts to remake condition. Looking to those efforts to remake condition and identity grapples with the microphysics of power and the practices of daily life, enacted by individuals and i11 collective politics, to consider what people do with situations: those dynamic, innovative contestations of (a never totalizing) power. Echoing the call raised by Brown (2009, 1239), my work focuses then on “examining ... social and political lives rather than assuming . . . lack of social being” in order to think about how subjects can and have “made a social world out of death itself” (Brown 2009, 1233) or how, more generally, race can be reconfigured within the broader workings of what I am calling racial discipline and performative imperatives. But in addressing the quotidian and those efforts to remake condition and identity, this study insists on a shift in perspective in terms of how power is thought about. As I have remarked, I am not focused on biopolitics or what can be seen as solely sovereign forms of power that are deployed to condition who will live and who will die. Instead, I am concerned with disciplinary power, which is articulated simultaneously but at a different level to biopolitics (and despi te the exercise of sovereign forms of power} (Foucault 2003a, 250). For Foucault, this form of power is not absolute, nor does it exist in opposition to resistance. Rather, power is seen as always fragmentary and incoherent, and power and resistance are seen as mutually constitutive. Disciplinary power is productive, in that it generates particular capacities and forms of subjectivity (and, necessarily, agency). And finally, though subjects are formed in power, they are not reducible to it, not determined by power.

### A2 No Progress

#### The narrative of “no progress” is affectively appealing but historically imprecise – major gains have been achieved and the political implications of their ethics risks throwing out the possibility of a less violent, less dehumanizing future around the world.

**Winant 15** – (2015, Howard, Professor of Sociology at UC-Santa Barbara, “The Dark Matter: Race and Racism in the 21st Century,” Critical Sociology 2015, Vol. 41(2) 313–324.

The World-Historical Shitpile of Race Structural racism – an odious stinkpile of shit left over from the past and still being augmented in the present – has been accumulated by ‘slavery unwilling to die’,4 by empire, and indeed by the entire racialized modern world system. The immense waste (Feagin et al., 2001, drawing on Bataille) of human life and labor by these historically entrenched social structures and practices still confronts us today, in the aftermath of the post-Second World War racial ‘break’. Our antiracist accomplishments have reduced the size of the pile; we have lessened the stink. But a massive amount of waste still remains. So much racial waste is left over from the practice of racial domination in the early days of empire and conquest, to the present combination of police state and liberalism! Indeed it often seems that this enormous and odious waste pinions the social system under an immovable burden. How often have despair and hopelessness overcome those who bore this sorrow? How often have slave and native, peon and maquiladora, servant and ghetto-dweller, felt just plain ‘sick and tired’ (Nappy Roots, 2003), encumbered by this deadening inertia composed of a racial injustice that could seemingly never be budged? How often, too, have whites felt weighed down by the waste, the guilt and self-destruction built into racism and the ‘psychological wage’? Yet racial politics is always unstable and contradictory. Racial despotism can never be fully stabilized or consolidated. Thus at key historical moments, perhaps rare but also inevitable, the sheer weight of racial oppression – qua social structure – becomes insupportable. The built-up rage and inequity, the irrationality and inutility, and the explosive force of dreams denied, are mobilized politically in ways that would have seemed almost unimaginable earlier. Racism remains formidable, entrenched as a structuring feature of both US and global society and politics. Indeed it often seems impossible to overcome. Yet That’s Not the Whole Story We are so used to losing! We can’t see that the racial system is in crisis both in the US and globally. Large-scale demographic and political shifts have overtaken the modern world (racial) system, undermining and rearticulating it. During and after the Second World War a tremendous racial ‘break’ occurred, a seismic shift that swept much of the world (Winant, 2001). The US was but one national ‘case’ of this rupture, which was experienced very profoundly: racial transformations occurred that were unparalleled since at least the changes brought about by the US Civil War. Omi and I (1994) – and many, many others – have proposed that the terrain of racial politics was tremendously broadened and deepened after the War. The increased importance of race in larger political life not only grounded the modern civil rights movement but shaped a whole range of ‘new social movements’ that we take for granted today as central axes of 8 Critical Sociology political conflict. In earlier stages of US history it had not been so evident that ‘the personal is political’ – at least not since the end of Reconstruction. From the explicit racial despotism of the Jim Crow era to the ‘racial democracy’ (of course still very partial and truncated) of the present period … : that is a big leap, people. Of course thereIn the modern world there were always black movements, always movements for racial justice and racial freedom. The experience of injustice, concrete grievances, lived oppression, and resistance, both large and small, always exists. It can be articulated or not, politicized or not. These movements, these demands, were largely excluded from mainstream politics before the rise of the civil rights movement after the War. Indeed, after the Second World War, in a huge ‘break’ that was racially framed in crucial ways, this ‘politicization of the social’ swept over the world. It ignited (or reignited) major democratic upsurges. This included the explicitly anti-racist movements: the modern civil rights movement, the anti-apartheid movement, and the anti-colonial movement (India, Algeria, Vietnam, etc.). It also included parallel, and more-or-less allied, movements like ‘second-wave’ feminism, LGBTQ (née gay liberation) movements, and others. In short, the world-historical upheaval of the Second World War and its aftermath were racial upheavals in significant ways racial upheavals: the periphery against the center, the colored ‘others’ against ‘The Lords of Human Kind’ (Kiernan, 1995). These movements produced: • Demographic, economic, political, and cultural shifts across the planet • The destruction of the old European empires • The coming and going of the Cold War • The rise of the ‘new social movements’, led by the black movement in the US And this is only the start of what could be a much bigger list. A Crisis of Race and Racism? ‘[C]risis’, Gramsci famously wrote, ‘consists precisely in the fact that the old is dying and the new cannot be born: in this interregnum, morbid phenomena of the most varied kind come to pass’ (Gramsci, 1971: 276). Using the Gramscian formula, I suggest that there is such a crisis of race and racism. On the one hand, the old verities of established racism and white supremacy have been officially discredited, not only in the US but fairly comprehensively around the world. While on the other hand, racially-informed action and social organization, racial identity and race consciousness, continue unchecked in nearly every aspect of social life! On the one hand, the state (many states around the world) now claims to be colorblind, non-racialist, racially democratic, etc.; while on the other hand, in almost every case, those same states need race to rule. Consider in the US alone: race and electoral politics, race and social control, race and legal order … Why don’t our heads explode under the pressures of such cognitive dissonance? Why doesn’t manifest racial contradiction provoke as much uncertainty and confusion in public life and political activity as it does in everyday experience? Are we just supposed to pretend that none of this is happening? Can anyone really sustain the view that they are operating in a nonracial, ‘colorblind’ society? The ‘colorblind’ claim is that one should not ‘notice’ race. For if one ‘sees’ race, one wouldn’t be ‘blind’ to it, after all.5 But what happens to race-consciousness under the pressure (now rather intense in the US, anyway) to be ‘colorblind’? Quite clearly, racial awareness does not dry up like a raisin in the sun. Not only does it continue as a matter of course in everyday life, but in Winant 9 intellectual, artistic and scientific (both social and natural) life race continues to command attention. 6 ‘Colorblind’ ideologies of race today serve to impede the recognition of racial difference or racial inequality based on claims that race is an archaic concept, that racial inclusion is already an accomplished fact, and so on. Just so, persistent race-consciousness highlights racial differences and particularities. ‘Noticing’ race can be linked to despotic or democratic motives, framed either in defense of coercion, privilege, and undeserved advantage, or invoked to support inclusion, human rights, and social justice (Carbado and Harris, 2008; see also Brown et al., 2003). Obama Is he a mere token, a shill for Wall Street? Or is he Neo, ‘the one’? If neither alternative is plausible, then we are in the realm of everyday 21st-century US politics. This is a the territory in which, as Sam Rayburn famously said, ‘There comes a time in the life of every politician when he [sic] must rise above principle.’ Yet Barack Obama has transformed the US presidency in ways we cannot yet fully appreciate. Obama is not simply the first nonwhite (that we know of) to occupy the office. He is the first to have lived in the global South, the first to be a direct descendent of colonized people, the first to have a genuine movement background. Consider: How many community meetings, how many movement meetings did Obama attend before entering electoral politics? For all his limitations, Obama is by far the most progressive, the most ‘left’ person ever to have occupied the White House. 7 But he is no more powerful than any of his predecessors; he is constrained as they were by the US system of rule, by the US racial regime, by structural racism. In addition he is constrained by racism as no other US president has ever been. No other president has experienced racism directly: Moreover, while my own upbringing hardly typifies the African American experience – and although, largely through luck and circumstance, I now occupy a position that insulates me from most of the bumps and bruises that the average black man must endure – I can recite the usual litany of petty slights that during my forty-five years have been directed my way: security guards tailing me as I shop in department stores, white couples who toss me their car keys as I stand outside a restaurant waiting for the valet, police cars pulling me over for no apparent reason. I know what it’s like to have people tell me I can’t do something because of my color, and I know the bitter swill of swallowed back anger. I know as well that Michelle and I must be continually vigilant against some of the debilitating story lines that our daughters may absorb – from TV and music and friends and the streets – about who the world thinks they are, and what the world imagines they should be. (Obama, 2006: 233) On the other hand: he has a ‘kill list.’. All presidents kill people, but Obama is the first systematically and publicly to take charge of these egregious and unconstitutional uses of exceptional powers. In this he echoes Carl Schmitt, the Nazi political theorist, whose famous dictum is ‘Sovereign is he who decides on the exception’ (2004 [1922]). The drones, the surveillance, and the numerous right turns of his administration all stand in sharp contradiction not only to his campaign rhetoric, but to the anti-racist legacy of the civil rights movement that arguably put him in office. Obama has not interceded for blacks against their greatest cumulative loss of wealth in US history, the ‘great recession’ of 2008. He has not explicitly criticized the glaring racial bias in the US carceral system. He has not intervened in conflicts over workers’ rights – particularly in the public sector where many blacks and other people of color are concentrated. Obama himself 10 Critical Sociology largely deploys colorblind racial ideology, although he occasionally critiques it as well. Beneath this ostensibly postracial view the palpable and quite ubiquitous system of racial distinction and inequality remains entrenched. Though modernized and ‘moderated’, structural racism has been fortified, not undermined, by civil rights reform; Obama is not challenging it, at least not directly. Reframing the Discussion What should we be studying and teaching now? The list of themes I have highlighted here is partial of course, and perhaps impressionistic as well. If the argument I have proposed has any validity, then the ‘dark matter’ of race, which is even more invisible now than it was in the past – in its present ‘post-civil rights,’, ‘colorblind,’, and even ‘presidential’ forms – continues to exercise its gravitational pull on our politics. It continues to shape what is called (and improperly deprecated as) ‘identity politics.’. The ‘dark matter’ takes on new significance as a central feature of neoliberalism, which is enacted today through the deployment of ‘accumulation by dispossession’, ‘states of exception’, state violence, and exclusionary politics – all political practices that rely on racism. Yet the legacy of centuries of resistance to these depredations, the undeniable achievements of anti-racist and ant-imperialist struggles, the extension of democracy – often tortuous and always incomplete – to peoples of color, also exerts a significant political force. Race-based ‘freedom dreams’ (Kelley again) sustain the hope of democracy, inclusion, equality, and justice in the US and elsewhere.

## Deleuze

#### Exclusive causal focus on affect is a theoretical shortcut to avoid examining the concrete nature of politics – it erases confrontation with particularity

Grossberg 10 – (2010, Lawrence, PhD, Morris Davis Distinguished Professor of Communication Studies and Cultural Studies; Adjunct Distinguished Professor of Anthropology; Director of the University Program in Cultural Studies at UNC, “Affect’s Future,” in *The Affect Studies Reader*, p. 315-6)

Gs ac MG: Yes, that's something that we were going to ask about: is it possible that affect itself has been overinvested by theory? Is there a way that affect lets one off the hook in the way, as you've sometimes argued, that theory does? LG: Yes, I think that is a nice way of putting it. I do think that affect can let you off the hook. Because it has come to serve, now, too often as a "magical" term. So, if something has effects that are, let's say, non-representational then we can just describe it as "affect:' So, I think there is a lot of theorizing that does not do the harder work of specifying modalities and apparatuses of affect, or distinguishing affect from other sorts of non-semantic effects, or, as I said, analyzing the articulations between (and hence, the difference between, as well as how one gets from) the ontological and the "empirical." The last is a vexing problem, and crucial I think if we are ever going to sort out a theory of affect. It's like people who say the world is "rhizomatic:' The world isn't rhizomatic! I mean, as virtual, the world is rhizomatic. On the plane of consistency then, the world is rhizomatic. But there is always a plane of organization and that's what you have to describe because that is what you have to de-territorialize and decode, and then of course it will always be re-territorialized and you will of course never get back to the plane of consistency.' And whether or not Deleuze and Guattari thought you could become a body without organs, I have never had the desire .. . and I see nothing particularly political about it anyway. Gs & MG: But is it that these planes (virtual/actual or consistency/organization) are so separable or is it that they persist alongside one another in the manner of Spinoza's monism? That is, is there another way perhaps to think the spatiality of their relationship? LG: Yes, I do assume that these two planes are the same thing. It's like Nietzsche's will: it is the ontological condition of possibility of any empirical reality. But that doesn't mean that it is a description of any empirical reality. There is a difference between the transcendental condition of possibility and the actualization of those conditions. So, I think that sometimes affect lets people off the hook because it lets them appeal back to an ontology that escapes. And, it often ends up producing a radically de-territorializing politics that I have never been particularly enamored of anyway. But it also lets me too much off the hook, because what we need to do is take up this work and rethink it. You know that brilliant chapter in A Thousand Plateaus ( 1987) where Deleuze and Guattari talk about regimes of signification, or what Foucault would have called discursive apparatuses, different forms of discursive apparatuses. Machinic assemblages produce different kinds of effects. We know that. Foucault would say that. Deleuze would say that. And Spinoza too, you know. Some of those kinds of effects are useful to group together and call affect. But then you have to do the work of specifying the particular regime of signification, and the particular machinic effectivity that is being produced. In too much work done by people who talk about affect -or at least I get the feeling when reading some of it anyway-there is a kind of immediate effectivity of affect on the body. Despite constant denials, I can't escape the feeling that Brian Massumi's recent work, for example, on the color-coding of terror alerts reduplicates a kind of old-fashioned media-effects model. You know, you flash these lights at people and there is some kind of bodily response. Well, there isn't! Affect then becomes a magical way of bringing in the body. Certainly, there is a kind of mediation process but it is a machinic one. It goes through regimes that organize the body and the discourses of our lives, organize everyday life, and then produce specific kinds of effects. Organizations of affect might include will and attention, or moods, or orientation, what I have called "mattering maps:' and the various culturally and phenomenological constituted emotional economies. I say it this way because I am not sure that emotions can simply be described as affect, even as configurations of affect. I have always held that emotion is the articulation of affect and ideology. Emotion is the ideological attempt to make sense of some affective productions. So, I don't think that we've yet done the actual work of parsing out everything that is getting collapsed into the general notion of affect. Basically, it's become everything that is non-representational or non-semantic – that's what we now call affect. And, so, yes, I think you are right: it is letting us off the hook because then we don't end up having to find the specificity.

## Reps Focus Bad

#### Reps K bad – assumes *Representational Determinism*. Prefer the *particularized* and *surrounding context* of HOW reps were deployed.

Shim ‘14

(David Shim is Assistant Professor at the Department of International Relations and International Organization of the University of Groningen – As part of the critique of visual determinism, this card internally quotes David D. Perlmutter, Ph.D.. He is Dean of the College of Media & Communication at Texas Tech University. Before coming to Texas Tech, he was the director of the School of Journalism and Mass Communication at the University of Iowa. As a documentary photographer, he is the author or editor of seven books on political communication and persuasion. Also, he has written several dozen research articles for academic journals as well as more than 200 essays for U.S. and international newspapers and magazines such as Campaigns & Elections, Christian Science Monitor, Editor & Publisher, Los Angeles Times, MSNBC.com., Philadelphia Inquirer, and USA Today. Routledge Book Publication –Visual Politics and North Korea: Seeing is believing – p.24-25)

Imagery can enact powerful effects, since political actors are almost always pressed to take action when confronted with images of atrocity and human suffering resultant from wars, famines and natural disasters. Usually, humanitarian emergencies are conveyed through media representations, which indicate the important role of images in producing emergency situations as (global) events (Benthall 1993; Campbell 2003b; Lisle 2009; Moeller 1999; Postman 1987). Debbie Lisle (2009: 148) maintains that, 'we see that the objects, issues and events we usually study [. . .] do not even exist without the media [.. .] to express them’. As a consequence, visual images have political and ethical consequences as a result of their role in shaping private and public ways of seeing (Bleiker. Kay 2007). This is because how people come to know, think about and respond to developments in the world is deeply entangled with how these developments are made visible to them. Visual representations participate in the processes of how people situate themselves in space and time, because seeing involves accumulating and ordering information in order to be able to construct knowledge of people, places and events. For example, the remembrance of such events as the Vietnam War, the terrorist attacks of 11 September 2001 or the torture in Abu Ghraib prison cannot be separated from the ways in which these events have been represented in films, TV and photography (Bleiker 2009; Campbell/Shapiro 2007; Moller2007). The visibility of these events can help to set the conditions for specific forms of political action. The current war in Afghanistan serves as an example of this. Another is the nexus of hunger images and relief operations. Vision and visuality thus become part and parcel of political dynamics, also revealing the ethical dimension of imagery, as it affects the ways in which people interact with each other. However, particular representations do not automatically lead to particular responses as, for instance, proponents of the so-called 'CNN effect’ would argue (for an overview of the debates among academic, media and policy-making circles on the 'CNN effect', see Gilboa 2005; see also. Dauber 2001; Eisensee/ Stromberg 2007; Livingston/Eachus 1995; O'Loughlin 2010; Perlmutter 1998, 2005; Robinson 1999, 20011. There is no causal relationship between a specific image and a political intervention, in which a dependent variable (the image) would explain the outcome of an independent one (the act). David Perlmutter (1998: I), for instance, explicitly challenges, as he calls it, the 'visual determinism' of images, which dominates political and public opinion. Referring to findings based on public surveys, he argues that the formation of opinions by individuals depends not on images but on their idiosyncratic predispositions and values (see also, Domke et al. 2002; Perlmutter 2005).

## Capitalism

**Defending the importance of dissent dismantles the logic of neoliberalism – criminalizing dissent only reinforces the system**

**Godrej 14**, Farah. "Neoliberalism, Militarization, and the Price of Dissent: Policing Protest at the University of California." In The Imperial University: Academic Repression and Scholarly Dissent, edited by Piya Chatterjee, and Sunaina Maira. University of Minnesota Press, 2014. Minnesota Scholarship Online, 2015. doi: 10.5749/minnesota/9780816680894.003.0005.

The neoliberal logic entailed in the privatization of the University of California is, I have argued, necessarily interlinked with the logic of militarization and the criminalization of dissent, because it employs a militarized enforcement strategy, coupled with a political rhetoric that criminalizes the specific behaviors involved in protest and dissent against these strategies. The militarization of the university campus is thus not simply a reflection of the increasing militarization of American law enforcement based on the logic of ongoing threats to public safety encoded in years of the War on Drugs and the War on Terror.25 Rather, such **militarization is** one prong of **a necessary enforcement strategy** designed **to convey that** dissent against privatization is meant to be costly in inflicting various forms of legitimized violence upon those who dissent. The second prong of the enforcement strategy also conveys that **dissenters will pay a high price by being criminalized,** either through rhetoric that paints them **as violent and therefore** marginal, **unworthy,** and undesirable **in the public imagination or** throughlegal machinations that force them to expend tremendous financial resources on extricating themselves from **prosecution. The language of cost and price** here, of course, **reminds us of** the ongoing **hegemony—**and perhaps victory—**of** the conceptual frameworks of **neolib**eralism **and** its theoretical accompaniments, such as **rational choice theory,** predominantly featured in neoclassical economics. These **strategies of** criminalization and **militarization rest on** sending signals to adversaries, encoded precisely in these languages, wherein value and worth are measured in terms of indicators such as price or cost, and **rational actors** are assumed to be **guided by** a universally comprehensible **incentive structure.** Thus the strategies of criminalization and **militarization rest on de-incentivizing dissent,** so to speak, **assuming** that **dissenters will** measure the costs inherent in their actions and **choose rationally to cease** from engaging in such **dissent.** The **continued insistence on dissent is** therefore **resistance to the logic of** (p.141) **neoliberal privatization on multiple levels: it** not only **calls out** the **complicity of the university with the neoliberal state and** the **forces of private capital but also continues to dissent despite the “incentives” offered** in exchange **for desisting from dissent.** And in so doing, **it** should be **signaling its rejection** not simply of privatization but **of the entire** conceptual **baggage of neoliberalism, including its logics of rational choice, cost, price, and incentive, as well as its logic of structural violence.** In other words, the **ongoing struggle against** the logic of **neoliberal privatization requires that dissent continue, despite its high “price.”**

# PICS

## Campaign Financing

Because of the lack of litigation involving student elections and free speech, it is next to impossible to predict how a court will respond to a certain situation. But at least in the 9th Circuit, students are likely to enjoy at least some free speech rights when it comes to campaigning for student elected offices.

## Campus Disruption (e.g. Protest against speakers)

#### 1. Turn: These restrictions are veiled attempt by right-wing interest groups to stifle campus protest – not facilitate speech. Franke et al. 17. Katherine Franke [Sulzbacher Professor of Law at Columbia Law School] and dozens of other Columbia faculty members. "Faculty Statement on Charles Murray Lecture." March 20, 2017. www.law.columbia.edu/open-university-project/academic-freedom/faculty-murray-statement

Finally, while we reiterate our commitment to the robust exchange of ideas on Columbia’s campus – to which this letter seeks to make a contribution – **we strongly condemn recent** legislative **efforts** initiated **by the Goldwater Institute and the Ethics and Public Policy Center that would censure,** or worse criminalize, **student protest or disruption on campus. Cynically mistitled “Campus Free Speech Bills” these bills seek to impose serious sanctions on students who engage in a range of otherwise protected speech** and action **in educational settings. Their effect would** be to **radically undermine the robust campus environment where ideas are hotly debated,** contested, and argued **in the name of eliminating any “disturbance.”** We believe strongly in the right of student groups to invite speakers of their choice to campus. But by the same token, **those who find** those **speakers’ views abhorrent have an equal right to express their disagreement in a vigorous,** although **non-violent, manner. Efforts to vanquish disturbance** from our campus **mirror** similar **efforts to impose civility norms on academic inquiry** and debate. In our view, **one of the primary aims** and methods **of** a liberal arts **education is to disturb well-settled beliefs,** opinions, **and** notions of **truth through reasoned and rigorous interrogation.**

## Frats

### Competition

#### Perm – ban frats that exist for purely social associations – those associations are not protected. Previous cases prove.

Lukianoff 11, Greg. (President and CEO, Foundation for Individual Rights in Education). 8-1-2011, "To Survive, Fraternities Need to Stand for Something, Anything," Huffington Post, http://www.huffingtonpost.com/greg-lukianoff/fraternities-and-free-spe\_b\_912673.html, accessed 3-9-2017. NP

The strongest kind of freedom of association protected by the First Amendment is the right to “intimate” association, best represented by the family. Our government recognizes that the bonds of family are particularly important and that it should do its best to avoid actions that interfere with this bond. The second strongest kind of freedom of association is called “expressive” association. Sensibly, courts understand that the right to freedom of expression would not mean a great deal if we are forbidden from joining together with like-minded individuals to amplify the power of our voices and take collective action. This understanding forms the basis of our right to form groups around commonly held beliefs whether they are religious, secular, or ideological. Everything from Mothers Against Drunk Driving to NORML is a kind of expressive association. (This includes my nonprofit, the Foundation for Individual Rights in Education, as well.) Far, far below these two strongly protected forms of association is the weakling of the group: “social” association. Social associations are those groups that are built around activities like hanging out, drinking beer, having fun, or generally just excluding people you think are not quite as cool. While social associations do enjoy some protection under the First Amendment, it’s a very weak protection because, frankly, courts simply do not believe that social associations are that important. Therefore, the government can assume greater powers over the regulation of purely social associations than they could ever assume for expressive or intimate associations. So what does this all mean for fraternities? It means that if all you do is party and hang out on your campus, it’s possible that even public universities bound by the First Amendment can kick you off campus. The case law is a bit mixed, but in a 2007 case at the College of Staten Island, for example, the United States Court of Appeals for the Second Circuit allowed the college to eliminate a fraternity altogether, holding that the frat enjoyed very limited associational rights because it was merely a social institution**.** Fraternities faced with such challenges to their existence in the past have tried to argue that they are “intimate” associations. Sorry, guys, but courts haven’t fallen for that because you’re not literally brothers.

#### T – bans just push frats off campus where they can’t be regulated which exacerbates your harms

Jake New 14 summarizes and quotes Koch, Kruger and Fox, 9-30-2014, "Should colleges ban fraternities and sororities?," No Publication, https://www.insidehighered.com/news/2014/09/30/should-colleges-ban-fraternities-and-sororities, accessed 3-9-2017. NP

But some say that abolishing fraternities and sororities would not help curb instances of sexual assault and heavy drinking -- and could actually exacerbate them. While the majority of fraternity members do not commit rape, they are three times as likely to commit rape as non-members, according to a 2007 study. Another study, published in the NASPA Journal in 2009, found that 86 percent of fraternity house residents engaged in binge drinking, compared to 45 percent of non-fraternity men. Fraternity house members were twice as likely to fall behind in academic work, engage in unplanned sex, or be injured after drinking. Fraternity members were more likely to have unprotected sex, damage property, and drive, all while under the influence of alcohol. "It's not just a stereotype," said George Koob, the director of the National Institute on Alcohol Abuse and Alcoholism. "There is pretty good evidence that fraternity individuals are drinking more, particularly in the heavy range of binge drinking. They have more problems associated with drinking. They have more impairment in occupational functioning related to drinking, such as getting homework and term papers done. But, I don't think you should go about banning fraternities. Punishment is rarely the way to go about anything like this. If you punish a behavior, it comes back with a vengeance." In the case of banning a Greek system, that behavior could come back in the form of off-campus houses or underground fraternities that could not be regulated by colleges. "There's always the risk that if you force fraternities off campus, they just form their own houses off campus," said Kevin Kruger, president of NASPA: Student Affairs Administrators in Higher Education. "They're still there, exhibiting the same behaviors, only now they don't really have to answer to anybody." That's already the case with fraternities like American University's infamous "secret" frat Epsilon Iota and Wesleyan's Beta Theta Pi, a house that's facing a sexual assault lawsuit and where a sophomore fell from a third-story window earlier this month. Wesleyan has no say in how the chapter itself operates, so it instead resorted to banning its students from the house. Thomas Fox, the national executive director of Psi Upsilon, said that if banning fraternities and sororities drives houses off campus, many issues could be exacerbated by colleges' inability to intervene. "Quite frankly, bans don't accomplish anything," Fox said. "The problems that fraternities and sororities are facing exist outside of the Greek system as well. We offer educational opportunities to help combat these issues and have alumni volunteers to help mentor our members. When done right we are complementing the academic mission of the institutions where we exist."

#### No uniqueness – federal government is entitled to withhold funding to shut down frats for discrimination, which they do now.

Wolff 13, Henry. (Henry Wolff is the assistant editor of American Renaissance.) Race and Fraternities. <https://www.amren.com/features/2013/11/race-and-fraternities/> NP 3/9/17.

The future for fraternities looks grim. Greek students, who are rarely on campus for more than four years, are up against entrenched administrations and hostile media. Forty-four states have passed anti-hazing laws that criminalize even benign initiation rites under the guise of preventing acts which were already illegal. Federal authorities investigate the slightest whiff of “discrimination,” as well as any claim that Greeks have created a “hostile environment” for women or minorities. They threaten to withhold federal university funding in order to pressure administrations. The most popular fraternity website, Total Frat Move, has voiced its support for “anti-discrimination.” A few holdouts, such as the popular forum Old Row, will value tradition over conformity, but in the long run, if traditional Greek organizations want to maintain their character they will probably need to go off campus and underground.

#### T – multicultural frats are sources of empowerment and serve as safe havens for minority students

Friedler 15. Jake Friedler (Stanford ’15, Comp Literature Major), 3-22-2015, "In Defense of Fraternity," Stanford Arts Review, http://stanfordartsreview.com/in-defense-of-fraternity/, accessed 3-9-2017. NP

* Let us first note the diverse array of multicultural fraternities. While far from curing the malignancies of masculinity, which seem all but inherent to single-gender fraternities, these institutions have historically served as centers of empowerment and political engagement for minority groups. The maintenance of a fortified space for bonding and mobilization doesn’t seem nearly so problematic when it works in service of a group who is not already in power; don’t forget that men of color were not always considered “men” at all. Organizations like Alpha Phi Alpha and Omega Psi Phi list not only manhood but also community service, advocacy, perseverance, and uplift among their official values.

1. T – ruse of solvency – targeting frats makes racism/sexism/homophobia appear as isolated incidents, produced by frats rather than societal biases writ large. Outweighs – you can’t resolve structural biases.
2. T -- some of universities' biggest donors are former frat members - the university will loosely enforce codes on those wealthier/whiter frats to avoid losing donations - newer frats that serve minority and lower income groups will be targeted.
3. T – banning speech in fraternities means you also block the speech of those attempting to reform their rhetoric from within, means that the people’s mindsets will never be shifted

## Guns

### Competition

#### Guns aren’t just symbolic speech – they communicate a threat. That’s not protected.

Lithwick and Turner 13. Dahlia Lithwick and Christian Turner, 11-12-2013, "A Gun? Or Free Speech? The Strange and Alarming Rise of “Open Carry” Demonstrations.," Slate Magazine, http://www.slate.com/articles/news\_and\_politics/jurisprudence/2013/11/open\_carry\_demonstrations\_is\_carrying\_a\_gun\_to\_a\_protest\_protected\_by\_the.html, accessed 2-24-2017

If it communicates anything, carrying a gun in public tells bystanders that the carrier is prepared to kill someone. It may say more. It may not be intended to say that the carrier wants to kill someone or that the carrier will kill someone who is not a bad guy or that the carrier will use the gun even if confronted by a bad guy. (Although, as Duncan Black has pointed out, “[o]ne significant identifier of ‘the bad guy’ is that he’s the one with the gun.” That’s what seeing a gun openly in the hands of someone who is not a police officer has come to mean to many of us.) Gun-toting protestors of course claim that their speech is not about preparedness to kill but about changing that cultural reading: to show that good guys (and their children!) carry guns; that seeing a gun does not mean that someone is about to be shot; that you too can carry a gun in this way; that it’s your inalienable right to do so! The problem is that carrying a gun only says all these things if it also says that the carrier is prepared to kill someone. What open carriers hope to normalize, then, what they hope we all come to accept, is that having instant access to the means to kill is not a scary thing. To which we say: Good luck with that. Given how many people die every year as a result of gun violence, reasonable observers can’t differentiate between the AK-47 being brandished for lethal purposes and the one being brandished to celebrate freedom and self-reliance. That’s why reasonable observers tend to feel intimidated and call the cops. Maybe we should paint all the beloved assault weapons lavender? That would go a long way toward diffusing the alarm. The members of OCT genuinely don’t see themselves as having been intimidating to the four women they followed to a restaurant. They see themselves as the victims of these four women. They are unlikely to garner a lot of support for that proposition, however. The problem one runs into, when performing Speech Acts With Semi-Automatic Weapons, is that it’s unlikely your audience will feel less threatened just because you berate them for being idiots for being afraid. Whether the open-carry folks accept it or not, assault weapons are more than just extra-large earrings. OCT and other gun-carrying protestors tell us their purpose is not to intimidate. They don’t want us to be afraid of them. We just need to better understand what they’re trying to say. Let’s give them that. They are not like cross-burning Klansmen seeking to intimidate a class of victims. But they should give us this in return: Even if we take them at their word, people on the receiving end of a protest that uses military weapons as megaphones are intimidated. Perhaps these people labor under the misconception that guns and heated political debates don’t mix well. But perhaps they are also in reasonable fear of armed people who have arrived on the scene specifically to show passionate disapproval of their cause. This is why even supporters of the armed protestors and their First and Second Amendment rights concede that this means of counter-protest is a mistake: “I don’t know at what point the open carrying of rifles at a counter-protest becomes ‘intimidation,’” writes Charles C. W. Cooke at the National Review Online, “but I do know that getting close to that line is not a sensible or civil thing to do and that it is unlikely to win one any friends.” Burning crosses are undeniably intimidating symbols of abhorrent ideas. Guns are not even alwayssymbolic. Whatever else may be said with them, guns always say, “I can kill.” And the audience always hears, “That gun can kill me with the slightest of its carrier’s effort. My life hangs entirely upon the carrier’s forbearance.” We can find that message frightening and repulsive without considering it political speech. It’s scary to place your life, and the lives of your children, in the hands of a multitude of strangers each with the power effortlessly to take it. The protestors tell us they want to talk about freedom, but we will inevitably hear the undeniable threat built into the barrel of the gun itself. Our law should say we don’t have to.

1. If guns are speech, they’re fighting words since they communicate instigation of conflict

#### Symbolic speech is subject to regulations if its suppression serves a government interest

Justia U.S. Law, NO Date, "The Problem of “Symbolic Speech”," http://law.justia.com/constitution/us/amendment-01/60-symbolic-speech.html, accessed 2-24-2017

JustiaCase Law

Justice Jackson wrote: “There is no doubt that, in connection with the pledge, the flag salute is a form of utterance. Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality is a short cut from mind to mind.”1322 When conduct or action has a communicative content to it, governmental regulation or prohibition implicates the First Amendment, but this does not mean that such conduct or action is necessarily immune from governmental process. Thus, while the Court has had few opportunities to formulate First Amendment standards in this area, in upholding a congressional prohibition on draft-card burnings, it has stated the generally applicable rule. “[A] government regulation is sufficiently justified if it is within the constitutional power of Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedom is no greater than is essential to the furtherance of that government interest.”1323 The Court has suggested that this standard is virtually identical to that applied to time, place, or manner restrictions on expression.1324

#### Regulating guns on campus does – the first amendment suffers when the second takes precedence

Blanchfield 14. Patrick Blanchfield (Patrick Blanchfield is a doctoral candidate and Woodruff Scholar in Comparative Literature at Emory University and a graduate of the Emory Psychoanalytic Institute. He writes about American gun culture at carteblanchfield.com), 5-4-2014, "What Do Guns Say?," Opinionator, https://opinionator.blogs.nytimes.com/2014/05/04/what-do-guns-say/, accessed 2-24-2017. NP

Contemplating guns as speech, we confront a kind of autoimmune disorder: The tools once instrumental to the birth of our nation, and to the protection of the individual and the state alike, are increasingly turned against both. Guns historically used to midwife and safeguard the right to free speech are now growing ever more cross-wired with it, and speech cannot but be degraded in the process. Citizens in a democracy make a certain pact with one another: to answer speech with more speech, not violence. No matter how angry what I say makes you, you do not have a right to pull a gun on me. But now the gun has already been drawn, nominally as an act of symbolic speech — and yet it still remains a gun. A slippage has occurred between the First and Second Amendments, and the First suffers as a result. The moral bravery political protest demands is no longer enough; to protest in response now requires the physical bravery to face down men with guns. This situation is alarming, but it is also tragic. Asking after the propriety of guns in the public square ignores a basic reality: They are already there, and not just in ambiguously threatening demonstrations. We live in an era in which mass shootings have become a tacitly accepted feature of social life. Any space, public or private — offices, movie theaters, malls, street corners, schools — can be transformed at a moment’s notice into the site of a blood bath. Wherever we go, our existence as social selves — our vulnerability to one another in democratically shared spaces — is in the firing line.

#### Guns communicate a threat – means they aren’t protected

Blanchfield 14. Patrick Blanchfield (Patrick Blanchfield is a doctoral candidate and Woodruff Scholar in Comparative Literature at Emory University and a graduate of the Emory Psychoanalytic Institute. He writes about American gun culture at carteblanchfield.com), 5-4-2014, "What Do Guns Say?," Opinionator, https://opinionator.blogs.nytimes.com/2014/05/04/what-do-guns-say/, accessed 2-24-2017. NP

But what does it mean, in a democracy that enshrines freedom of speech, to publicly carry a gun as an expression of political dissent? Toting a weapon in a demonstration changes the stakes, transforming a protest from just another heated transaction in the marketplace of ideas into something else entirely. It’s bringing a gun to an idea-fight, gesturing as close as possible to outright violence while still technically remaining within the domain of speech. Like a military “show of force,” this gesture stays on the near side of an actual declaration of war while remaining indisputably hostile. The commitment to civil disagreement is merely provisional: I feel so strongly about this issue, the gun says, that if I don’t get my way, I am willing to kill for it. As Mao understood, the formal niceties of political persuasion are underwritten by the very real threat of harm. “Political power grows out of the barrel of a gun.”

### A2 UT Austin Case

1. Plaintiffs argued that guns themselves were regulations of speech – just proves there isn’t first amendment grounds for *banning* guns, not that banning them is inconsistent with the first amendment
2. The case isn’t done yet, and it just applies to Texas

Scott Jaschik 16, 8-23-2016, "Federal judge rejects academic freedom challenge to campus carry law," No Publication, https://www.insidehighered.com/news/2016/08/23/federal-judge-rejects-academic-freedom-challenge-campus-carry-law, accessed 2-24-2017. NP

The ruling is only on a request for a preliminary injunction, and the professors' lawsuit remains alive. Likewise, the ruling is only about the Texas law, not other laws or legislation in other states on campus carry. But the judge's ruling on the academic freedom issue -- one cited by faculty members in Texas and elsewhere to oppose guns in classrooms -- suggests that the professors nationwide could face long odds in making the case as a matter of federal law that academic freedom gives them the right to keep guns out of their classrooms.

## Plagiarism

#### Perm do both – plagiarism is not protected – Ward Churchill case proves

Welch 14, Benjamin, (University of Nebraska-Lincoln) "An Examination of University Speech Codes’ Constitutionality and Their Impact on High-Level Discourse" (2014). Theses from the College of Journalism and Mass Communications. Paper 40. NP 2/22/17.

In 2007, by an 8-1 vote, the CU Board of Regents terminated Ward Churchill on the basis of plagiarism, fabrication, improper citation and falsification, after an investigative committee released a 124-page document on Churchill’s misconduct.134 The litigious journey was just beginning, for Churchill, however, and he sued the University of Colorado at Boulder for wrongful termination, arguing that he was actually being fired because of his unpopular speech. A parallel used by Churchill’s colleague asked, “If a police officer didn’t like a car’s bumper sticker, could the officer pull over the driver for speeding if the driver truly was speeding?”135 The Colorado Supreme Court upheld previous decisions that Churchill’s firing was legal and not as a result of constitutionally protected speech. In 2013, the U.S. Supreme Court denied to hear his appeal.136

#### Perm do both – Supreme Court has held that academic standards that interfere with first amendment speech can be constitutionally applied on college campuses

Post 91. Robert C. Post, Racist Speech, Democracy, and the First Amendment, 32 Wm. & Mary L. Rev. 267 (1991), <http://scholarship.law.wm.edu/wmlr/vol32/iss2/4>. NP 3/11/17.

Although the Supreme Court has often held that "the First Amendment rights of speech and association extend to the campuses of state universities," and even that "the campus of a public university, at least for its students, possesses many of the characteristics of a public forum," 221 in fact state institutions of higher learning are public organizations established for the express purpose of education. The Court has always held that "a university's mission is education" and has never construed the first amendment to deny a university's "authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities."222 The Court has explicitly recognized "a university's right to exclude .. .First Amendment activities that . .. substantially interfere with the opportunity of other students to obtain an education.'' 2 ?- Thus student speech incompatible with classroom processes may be censored; faculty publications inconsistent with academic standards may be evaluated and judged; and so forth.

## Revenge Porn

### K (don’t read with either shell)

#### Vote them down for using the term revenge porn – the term trivializes violence and blames victims

Stavvers 15, 12-15-2015, "Let’s stop using the term “revenge porn”. Please.," Another angry woman, https://stavvers.wordpress.com/2015/12/15/lets-stop-using-the-term-revenge-porn-please/, accessed 4-13-2017. NP

Every time I see the phrase “revenge porn” it hits a kind of berserk button inside me. I am writing this post to save myself having to have the same bloody rant every time it pops up: automating my own fury as it were, because I doubt the phrase is going to go away any time soon. Revenge porn is not, as the name would suggest, like Kill Bill but naked. It’s the name the media like to give to distributing sexual images or videos (usually of women) without the consent of the person featured in them, usually to humiliate them. I’m not sure who came up with the name–it may have been men attempting to trivialise the violence they are enacting, or it may have been those well-meaning but ultimately harmful anti-porn feminists who have decided to have a pop at pornography. Either way, it’s a gross name for it, and as feminists we must be deeply critical of it. Revenge porn is neither revenge, nor porn. “Revenge” is inherently victim-blaming. It suggests that there is something that ought to be avenged: something that the victim did to warrant such treatment. There isn’t. Intimate images and videos aren’t released to avenge, they’re released to intimidate, to control, to humiliate. It’s probable that the perpetrator thinks he’s enacting revenge for perceived slight on the part of the victim, but that’s not what’s really happening, and it is not all right to keep on using the language that abusers will likely prefer. “Porn” is perhaps harder to define, but most definitions tend to include that it is produced for the purposes of sexual arousal to distinguish porn from other reasons people might be naked in representations. Again, “revenge porn” does not fit this purpose. In a lot of instances, perhaps, the images or video were created because the people involved found it erotic at the time, but the public distribution of them did not have titillation in mind. **The purpose was to intimidate, to control, to humiliate**. The usage of “porn” here is much the same as in the equally ghastly phrase “child porn” to describe images or video of the sexual abuse of children (and we should stop using that phrase too). Put together, what we have in the term “revenge porn” is something which trivialises the violence being enacted, while simultaneously rooting for the perpetrators. As feminists, it’s important we question everything, but it’s not difficult to see why, in a culture which helps abusers at the expense of survivors, the phrase “revenge porn” grew so popular. So what to use instead of “revenge porn”? Instead of the euphemisms, I suggest we call it what it is, and here are a few suggestions: Abuse Humiliation Sexual shaming Violence against women Non-consensual distribution of sexual images or video You’ll note at least two of those are shorter than “revenge porn”.

#### Reject arguments that make debate unsafe – your discourse matters

Teehan:**[[1]](#footnote-1)**

Honestly, I don't think that 99% of what has been said in this thread so far actually matters. It doesn't matter whether you think that these types of assumptions should be questioned. It doesn't matter what accepting this intuition could potentially do or not do. It doesn't matter if you see fit to make, incredibly trivializing and misplaced I might add, links between this and the Holocaust. **All** of the **arguments that talk about how debate is** a **unique** space for questioning assumptions **make an assumption of safety**. They say that this is a space where one is safe to question assumptions and try new perspectives. **That is not true** for everyone. **When we allow arguments that question the wrongness of racism,** sexism, homophobia, rape, lynching, etc., **we make debate unsafe for certain people. The idea that debate is a safe space to question all assumptions is** the definition of **privilege**, it begins with an idea of a debater that can question every assumption. **People who face the actual effects** of the aforementioned things **cannot question those assumptions,** and making debate a space built around the idea that they can is hostile. So, you really have a choice. Either 1) say that you do not want these people to debate so that you can let people question the wrongness of everything I listed before, 2) say that you care more about letting debaters question those things than making debate safe for everyone, or 3) make it so that saying things that make debate unsafe has actual repercussions. On "**debate is not the real world**". **Only for people who can separate their existence in "the real world" from** their existence in **debate.** That means privileged, white, heterosexual males like myself. I don't understand how you can make this sweeping claim when some people are clearly harmed by these arguments. **At the end of the day, you have to figure out whether you care about debate being safe for everyone** involved. I don't think anyone has contested that these arguments make debate unsafe for certain people. If you care at all about the people involved in debate then **don't vote on these arguments**. If you care about the safety and wellbeing of competitors, then don't vote on these arguments. If you don't, then I honestly don't understand why you give up your time to coach and/or judge. The pay can't be that good. I don't believe that you're just in it for the money, which is why I ask you to ask yourselves whether you can justify making debate unsafe for certain people.

### Theory – Trigger Warnings

A: If debaters read a position discussing revenge porn, then they must give a trigger warning

B:

C:

Revenge porn is a common experience and individuals in the debate community have experienced it

**Berman 2:** Berman, M. (2014, November 3). A plea to debaters. Retrieved November 4, 2014.

The Harvard Civil Liberties Law Review defines **revenge porn** as “public online posting of nude or sexually explicit pictures of a person, often with attached identifying information or derogatory comments[[1]](http://premierdebatetoday.com/2014/11/03/a-plea-to-debaters-by-mia-berman-2/" \l "_ftn1)”.  There exist several websites dedicated to the posting of revenge porn.  If it **is** not immediately obvious why revenge porn is atrocious, think about the implications of finding nude images of yourself on the Internet.  Any future employer could find them; a career in politics is automatically out the window.  It is **humiliating;** the most private parts of you are put on display without your consent for anyone to find them.  What is worse, it is often **done by someone you once trusted.** Additionally, once the images are released, **the trauma does not stop there.  If there is a name attached, victims could be harassed by anonymous individuals online or stalked.** Unfortunately, **this is not rare among teenagers, and most likely not uncommon within the debate community.** Nude skype sessions or sending revealing pictures and snapchats and have become a modern casualty of many relationships, and debationships are a pretty regular occurrence.  According to one study, **nearly 22% of teenage girls and 18% of teenage boys report sending revealing pictures.****[[2]](http://premierdebatetoday.com/2014/11/03/a-plea-to-debaters-by-mia-berman-2/" \l "_ftn2)**This topic might relate to many in our community, and as such, we must approach it delicately**. Debaters must understand that their opponents or judges may have been involved in an instance of revenge porn,** or fear they might, **and** as such, **may not feel comfortable judging or debating these types of rounds.**Personally, I have added a disclaimer to my paradigm, which I encourage judges to consider copying to your own paradigm to avoid unnecessary harm in round as a result of one person in the round being triggered.

### Theory

#### A: If the negative debater reads a counterplan that says that public colleges should restrict revenge porn, then they must a) clarify how universities will determine what counts as revenge porn, and b) clarify the implementation mechanism of the counterplan

#### B:

#### C:

#### Weighing ground – implementation mech and definitions for revenge porn are a key issue in the lit and determine how effective statutes can be

Larsen 13. Justine Larsen, (law student, Ohio State University Moritz College of Law) 11-1-2013, "Moritz College of Law," No Publication, http://moritzlaw.osu.edu/students/groups/osjcl/amici-blog/criminalizing-revenge-porn-the-debate/, Ohio State Journal of Criminal Law, accessed 4-12-2017. NP

Opponents to legislation point to the ambiguity surrounding what exactly constitutes revenge porn. Sarah Jeong, Revenge Porn Is Bad. Criminalizing It Is Worse, Wired (Oct. 28, 2013, 9:30 AM), http://www.wired.com/2013/10/why-criminalizing-revenge-porn-is-a-bad-idea/. While we may want to penalize the vindictive ex-boyfriend who posted his ex-girlfriend’s private images, we may also inadvertently punish other more innocent conduct, such as potentially convicting “a reporter [for] publishing screencaps of Anthony Weiner’s more infamous tweets.” Id. On the other hand, if we narrow the criminal statute too much, we could fail to encompass certain forms of revenge porn, leaving some victims without legal recourse. Id. (referring to a law that “does not cover selfies sent to the vengeful ex or liability for website operators”). Proponents have taken this over broad or too narrow concern into consideration in drafting legislation. Professor Mary Anne Franks argues that legislation “[will] not criminalize the dissemination of images voluntarily captured in public or commercial settings” and also “will not . . . criminalize disclosures made for legitimate purposes, such as the reporting of unlawful conduct or matters in the public interest.” Why Revenge Porn Must Be a Crime, supra. This ensures that the statute will not be so over broad to include innocent conduct. She and Professor Danielle Citron also urge that the statute focus on whether the victim consented to distribution of the image, Mary Anne Franks & Danielle Citron, It’s Simple: Criminalize Revenge Porn, or Let Men Punish Women They Don’t Like, The Guardian (Apr. 17, 2014, 11:40 PM), http://www.theguardian.com/commentisfree/2014/apr/17/revenge-porn-must-be-criminalized-laws, which would ensure all victims have legal protection.

#### Real world education – people in the lit discuss how broad any statute would be – only that allows us to consider practical consequences which is key to clash and ground – no one says revenge porn is good so my only answers are solvency answers which I lose if the counterplan is vague – kills fairness and substantive engagement. Also resolvability – a. there’s no way to resolve competing solvency claims – most revenge porn’s posted anonymously on websites not under campus jurisdiction so implementation is super unclear b. constitutionality issues are context specific since things like strict scrutiny or exceptions for obscenity depend on how narrow the CP is – this leads to judge intervention, vacuous debates and ground loss since we can’t engage on key issues.

### Solvency

#### Legal remedies exist for victims – new laws are too broad and risk censorship, discriminatory application, and over-criminalization

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“FREE SPEECH IS important, but…” Oh no. Here we go again. This time, the issue is the criminalization of revenge porn. Much of the media narrative characterizes revenge porn as a new, runaway technological scourge too disruptive to fall under any existing law, but that is simply untrue. A number of legal remedies against both vengeful exes and website operators already exist: civil tort actions, DMCA takedowns, criminal statutes against extortion, and even a federal law that could give the FBI authority to go after the sites. Discussions of internet law seem like an endless cycle of “but what about the women/children?” pitted against “but what about my free speech?” We’re back on the merry-go-round again with the recent furor over revenge porn — the unconsented-to public distribution of nude photos or videos, usually by a significant other (often male) who intends to humiliate or harass their ex-partner (often female). First Amendment issues are hardly the most compelling reason why we should reject the push to criminalize revenge porn. The exploitation of women and children has always been the Trojan horse of internet regulation, from the now old-and-venerable Communications Decency Act of 1996, to more recent attempts like the ridiculous and ineffectual California ballot initiative Proposition 35 (which attempted to address human trafficking by, among other things, requiring registered sex offenders to disclose their internet handles to the authorities). At each turn, such efforts have been confronted with the inconvenient existence of the First Amendment. Although First Amendment issues are certainly present with respect to revenge porn, it’s hardly the most compelling reason why we should reject the push to criminalize it. Many of the discussions of revenge porn — including the exchange between Amanda Marcotte and Cathy Reisenwitz in Talking Points Memo — have focused on free speech, forcing us to consider a false dichotomy between speech and gendered harassment. Many of the discussions force us to consider a false dichotomy between speech and gendered harassment. A haze of uncertainty surrounds the definition of revenge porn, as Reisenwitz points out. An overbroad definition of revenge porn could net a reporter publishing screencaps of Anthony Weiner’s more infamous tweets. Although we have in our minds the perfect-paradigm case of a sympathetic victim — a nice girl with a penchant for selfies — and an unsympathetic perpetrator — a spurned, vindictive ex-boyfriend with a blatant streak of misogyny — the web of liability becomes nebulous when we think about cases that fall outside this paradigm. (And things get more problematic when we think about websites and website operators beyond the horrifying IsAnyoneUp.com and the entirely unlikable Hunter Moore.) Dismissing such concerns, Marcotte argues that giving up tabloid reporting for the sake of revenge porn victims is fair: Knowing that [Anthony] Weiner’s dick pics are out there but being unable to view them myself seems like a fair trade for a world where men are more limited in the weapons they can use to stalk, abuse, and control women. …But the sacred constitutional freedom to snark about Anthony Weiner is hardly the point. The point is that a new criminal statute paves another way to put a human life on hold and a human body in prison — and yes, a paparazzo still counts as human. There are unintended consequences to overbroad laws, and failing to take that into consideration when advocating for increased criminal liability is irresponsible. SARAH JEONG ABOUT Sarah Jeong is co-Editor-in-Chief of the Harvard Journal of Law & Gender, and is a third-year student at Harvard Law School. She has previously done clinical work with the Berkman Center and the Electronic Frontier Foundation, though her opinions here are her own. Jeong is also the author of Dear Miss Disruption, “an advice column from Silicon Valley”. Follow her on Twitter @sarahjeong. The problem is further exacerbated by how the internet works. Very little on the web exists in isolation from the rest: content is regularly copied, mimicked, modified, and linked to. Is linking to something illegal in itself illegal? (Sometimes it is, sometimes it isn’t). An earlier iteration of the California revenge porn bill would have found [or] a blogger who analyzes legal developments in revenge porn guilty of a misdemeanor for linking to the very sites he was analyzing. While it seems indisputable that those who blog about Hunter Moore should not be subject to criminal liability, what about someone who submits a link to a link aggregator like Reddit, Hacker News, or Slashdot? And what about the link aggregator itself? This tension is at the heart of internet law. Indeed, section 230 of Communications Decency Act, a cornerstone of internet law, provides a shield for the speech of online intermediaries — even that which is “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.” Despite CDA 230, the distributors of revenge porn and the websites that host the pictures are still subject to a number of legal liabilities, both civil and criminal: A victim can go after the initial vengeful discloser under a tort theory of public disclosure of private information **and** even the intentional infliction of emotional distress. A victim who personally took the photographs holds copyright in them and can have them removed from a website through the Digital Millennium Copyright Act. Porn websites – whether hosting voluntary or involuntary porn — are subject to more laws than just CDA 230; conceivably, the FBI could go after some revenge porn sites under 18 U.S.C. 2257 for not keeping records on the subjects of their photos. Finally, websites that offer to take down photos in return for payment are clearly in the business of extortion, which, once again, is already illegal. Framing a new criminal law as a necessity is disingenuous: many of the most egregious revenge porn websites have now shut down, and a number of civil suits (some based on causes of action mentioned above) have been undertaken against those involved. Retributive justice won’t tangibly help the victims, and deterrent effects are likely to be redundant. In light of these various recourses through existing laws, what does the push to criminalize revenge porn actually achieve? There is something to be said for the dubious pleasure of retributive justice. But will that tangibly help the victims? Whatever deterrent effect that criminalization could generate — such as discouraging future postings of revenge porn — is likely to be redundant given the civil litigation already taking place. More’s the pity: this moment of media attention on the stalking, harassment, and employment problems suffered by victims could have been used to legislate against exactly that. As Marcotte herself points out, revenge porn is often just another form of domestic violence or sexual harassment. The problem is embedded within a larger context of violence against women and the stigmatization of the naked body. The problem of revenge porn is embedded within a larger context of violence against women and the stigmatization of the naked body, which means the issue can be tackled from many other directions. Why look to regulating the internet when restraining orders cannot be enforced, when domestic violence victims are hampered in initiating civil actions against abusers, when employers can fire their employees for being sexualized on the internet? Our efforts would be better spent seeking legislation to remedy the suffering that victims actually experience. Criminalizing revenge porn solves one problem while potentially generating many more. An overbroad criminal law is a threat to the public, runs the risk of being struck down by a court (for violating the First Amendment), or even worse, becomes the basis of questionable convictions and imprisonments. But an overly narrow law — like the final version of the California revenge porn law, which does not cover selfies sent to the vengeful ex or liability for website operators — is little more than lip service to the harm suffered by victims. We do not need to choose between the internet and women, or between free speech and feminism. These are false and unnecessary dichotomies. Refusing to criminalize revenge porn would not make us misogynists. It would instead make us prudent.

1. **No solvency – photos are submitted online but colleges don’t have legal recourse since websites aren’t run by students**
2. **No solvency – photos are submitted anonymously – there’s no one the college could punish**
3. **Ruse of solvency – colleges claim they’re resolving problems but don’t have legal jurisdiction which prevents actions with a real impact on students**

#### Laws that regulate nonconsensual nude images are too broad – they chill speech and prevent disclosure of important political images

ACLU 14, 9-23-2014, "First Amendment Lawsuit Challenges Arizona Criminal Law Banning Nude Images," American Civil Liberties Union, https://www.aclu.org/news/first-amendment-lawsuit-challenges-arizona-criminal-law-banning-nude-images?redirect=free-speech/first-amendment-lawsuit-challenges-arizona-criminal-law-banning-nude-images, accessed 4-12-2017. NP 4/12/17.

PHOENIX, Ariz. – A broad coalition of bookstores, newspapers, photographers, publishers, and librarians filed a federal lawsuit today challenging a new Arizona law that criminalizes speech protected by the First Amendment. The plaintiffs are represented by the American Civil Liberties Union, the ACLU Foundation of Arizona, and the law firm Dentons US LLP, which is general counsel to the Media Coalition. The "nude photo law" makes the display, publication, or sale of nude or sexual images without the subject’s explicit consent a felony punishable by nearly four years in prison. As written, the law could be applied to any person who distributes or displays an image of nudity – including pictures that are newsworthy, artistic, educational, or historic – without the depicted person’s consent, even images for which consent was impossible to obtain or is difficult to prove. For example, a bookseller who sells a history book containing an iconic image such as the Pulitzer Prize-winning photograph "Napalm Girl" – the unclothed Vietnamese girl running from a napalm attack – could be prosecuted under the law. A library lending a photo book about breast feeding to a new mother, a newspaper publishing pictures of abuse at the Abu Ghraib prison, or a newsweekly running a story about a local art show could all be convicted of a felony. "This law puts us at risk for prosecution," said Gayle Shanks, owner of Changing Hands Bookstore, one of the plaintiffs, which has been in operation for more than 40 years in Tempe and recently opened a location in Phoenix. "There are books on my shelves right now that might be illegal to sell under this law. How am I supposed to know whether the subjects of these photos gave their permission?" The law was passed with the stated intent of combating "revenge porn," a term popularly understood to describe a person knowingly and maliciously posting an identifiable, private image online with the intent and effect of harming an ex-lover. But the lawsuit argues that the law criminalizes far more than such offensive acts, and it is not limited to "revenge." A prosecutor need not prove that the person publishing the photograph intended to harm the person depicted. Likewise, a person who shares a photograph can be convicted of a felony even if the person depicted had no expectation of privacy in the image and suffered no harm. The law applies even when the person in the picture is not recognizable, and the law is not limited to "porn" – it criminalizes publication of nude and sexual images that could not possibly be considered pornography, let alone obscene. The lawsuit charges that law is so broad and vague that it could send people to prison for sharing material that is fully protected by the First Amendment, and the plaintiffs point to past experience as reason for concern. One of the plaintiffs, Voice Media Group, publishes the Phoenix New Times, which has previously been harassed by law enforcement for engaging in protected speech, including the publication of nude images from a local art show. "Arizona’s law clearly violates the First Amendment, because it criminalizes protected speech," said Lee Rowland, staff attorney with the ACLU’s Speech, Privacy, and Technology Project. She added, "States can address malicious invasions of privacy without treading on free speech, with laws that are carefully tailored to address real harms. Arizona’s is not." In addition to Changing Hands Bookstore, the booksellers bringing the lawsuit include Antigone Books in Tucson; Bookmans, which has stores in Tucson, Phoenix, Mesa and Flagstaff; Copper News Book Store in Ajo; and Mostly Books in Tucson. They are joined by Voice Media Group, which publishes numerous newsweeklies; the American Booksellers Foundation for Free Expression; the Association of American Publishers; the Freedom to Read Foundation; and the National Press Photographers Association, whose members have produced images that may now be criminal to distribute in Arizona, including the “Napalm Girl” photograph mentioned earlier. "This law will have an unconstitutional chilling effect on free speech." said David Horowitz, executive director of the Media Coalition, whose members include the plaintiff associations of publishers, librarians, and booksellers. "To comply with the law, booksellers and librarians will have to spend countless hours looking over books, magazines, and newspapers to determine if a nude picture was distributed with consent. Many store owners will simply decline to carry any materials containing nude images to avoid the risk of going to prison."

#### Outweighs – things like images of abuse spark widespread protest that lead to structural shifts

#### Revenge porn laws lead to censorship and discrimination – alternative solutions are better

Jeremy Wilson **13**. On October 10th, 2013, 10-10-2013, "In defence of revenge porn," No Publication, http://kernelmag.dailydot.com/comment/column/6000/in-defence-of-revenge-porn/, accessed 4-11-2017

In an attempt to take down the threat of creepy, vengeful exes, California Governor Jerry Brown signed a bill that bans revenge porn into law on October 1. The law, which took effect immediately, makes it illegal to post identifiable nude photos of another person online without their consent and with “the intent to cause substantial emotional distress or humiliation.” Offenders can be sentenced to up to one year in jail and levied with a $1,000 fine. Legislators in New York are now looking to follow suit with an even more expansive law. Some activists are pushing for the federal government to create sweeping legislation (which, if state laws stand, may be inevitable anyway given that Internet traffic crosses state lines.) While those advocating for revenge porn laws are trying to rectify a serious social problem that has led to several high-profile cases of young girls committing suicide, the laws unfortunately pose risks of their own. As with all laws criminalizing speech, revenge porn laws may violate the First Amendment. Back in June, the Electronic Frontier Foundation criticized California’s bill, saying, “It also criminalizes victimless instances. And that’s a problem with the First Amendment.” The ACLU initially voiced concern that the law could be used to censor photos with political implications or containing evidence of a crime. Likewise, Jeff Hermes, Director of the Digital Media Law Project at Harvard, contends that the law is problematic because it doesn’t make exemptions for newsworthy stories. For instance, politicians like former New York Congressman Anthony Weiner (who claimed that someone else maliciously released those famous pics) could use it to protect themselves from appearing in a compromising situation. Even beyond the laws' specifics is the fact that – regardless of how it’s worded – the law criminalizes images, which cannot be inherently harmful. Society’s reaction to nude photos is what causes victims’ emotional and professional suffering. And since each generation becomes increasingly comfortable with nudity and sexuality, revenge porn laws may soon be another outdated and impossible-to-remove statute on the books. Revenge porn laws also run the risks characteristic of most criminal statutes: they are inflexible, they could create victims where there are none, they are susceptible to discriminatory police enforcement, and they add more inmates to a country with the highest per capita prison population in the world. This is in contrast to civil lawsuits, in which the amount of compensation awarded to plaintiffs is determined on a case-by-case basis, defendants are only brought to trial when victims feel seriously harmed, police have less room to discriminate, and offenders pay out-of-pocket rather than in a jail cell. In fact, numerous victims of revenge porn have successfully sued their exes in civil court. Most importantly, we can resolve the fundamental problems underlying revenge porn through cultural change that doesn’t involve the risks associated with legal bans. We inadequately shame those who share images of others’ nudity without their consent. We need to be sure to ostracize everyone who even considers posting revenge porn.

### Competition

#### Err aff on competition – neg has a positive burden of proof that the PIC’s competitive a. prep burden – they’re more familiar with the position so are already at an advantage, b. otherwise they get access to functionally infinite CPs since there’s always a risk of competition which skews ground and predictability

Perm do both

#### Harm caused by images is sufficient to justify an exception to the first amendment

Koppelman 16, Andrew. (John Paul Stevens Professor of Law and Professor of Political Science, Department of Philosophy Affiliated Faculty, Northwestern University.) Emory Law Journal. 2016. REVENGE PORNOGRAPHY AND FIRST AMENDMENT EXCEPTIONS. law.emory.edu/elj/\_documents/volumes/65/3/koppelman.pdf. NP 4/12/17.

The task of carving out exceptions has a structure that is familiar from the law of religious accommodation. American law sometimes gives religion special treatment. Quakers’ and Mennonites’ objections to participation in war have been accommodated since Colonial times. Sacramental wine was permitted during Prohibition. Today the Catholic Church is exempted from antidiscrimination laws when it denies ordination to women. We exempt people from generally applicable laws when they have sufficiently urgent reasons (religious scruples have traditionally been held to be such) and the law’s purposes won’t be thwarted by accommodation.152 When an exception to free speech protection (supposing it already settled that we are in the realm of free speech salience) is proposed, the courts have to ask whether the harm in question is sufficiently harmful to modify free speech doctrine. No formula can help with that step. Harm is a setback to interests, and there is perpetual contestation about which human interests are important. The Court has never devised a test for what counts as a compelling state interest. Pace the Court, it is not possible to freeze in advance the categories of harm that call for exceptions. Human vulnerability takes many forms, and no one can anticipate all of the harmful things that can be accomplished with speech in the future. Assessing the degree of harm is inevitably a contestable undertaking. But one factor must be whether the harm reaches into the area of free speech salience. Harm that silences a class of speakers has to be taken seriously. If the harm is serious enough, it next must be asked whether that harm can be prevented without chilling the “atmosphere of freedom” that free speech seeks to foster. Even some speech that is antithetical to the liberal order has to be tolerated. Communists did not believe in free speech, and so it was argued in the 1950s that their speech should not itself be protected.153 But the consequence of that non-protection was an atmosphere of fear that reached far beyond the Communists. Much of the flowering of free speech theorizing in the 1960s was born of a determination not to repeat that experience.154 That leads us to a lawyer’s question: can the category of unprotected speech be crafted with sufficient precision that clear notice is given as to which speech is protected and which is unprotected? Categories of low-value speech must be “well-defined and narrowly limited.”155 That responds to familiar concerns of “chilling effect” and “slippery slope.” If, however, a category of unprotected speech can be crafted with enough precision, then exceptions to ordinary free speech principles, even the prohibition of viewpoint discrimination, can be consistent with the broader purposes of the system of freedom of expression. A final objection to this kind of exercise is that, even if free speech law is a judicial construct, its stability and effectiveness depend on extreme judicial reluctance to carve out new categories of non-protection. Dissenting political speech has often been regarded as having low value, and if courts took for granted a power to make exceptions whenever the benefits of censorship seemed to outweigh the costs, America would be a much more repressive country. Chief Justice Roberts’s mythical story may be intellectually indefensible, but it is still better to over-constrain judges than to underconstrain them. Overconstraint has its costs, however. Free speech doctrine needs to honestly take account of the harm that speech can sometimes do.156 When the harm is severe enough, a new exception can be created, as happened with child pornography.157 There is no way to determine whether the danger of non-protection of speech outweighs the benefit without considering the magnitude of the harm at issue. CONCLUSION Revenge pornography prohibitions raise a serious free speech problem. They suppress truthful information, and they do so in order to prevent audiences from being persuaded, by that information, to form a viewpoint with which government disagrees: specifically, that this woman is a despicable whore because she allowed this picture to be taken. The harm that this speech causes is, however, so severe that an exception to ordinary free speech principles is justified.

#### Outweighs - a. historical precedent – adhering to logic of previous decision by the highest court ensures best understanding of the constitution, b. Koppelman’s a law professor and understands constitutional precedent, c. probability – obscenity’s low value speech – regulations are likely to be justified

United States Courts, "What Does Free Speech Mean?," http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does, accessed 3-10-2017. NP

Freedom of speech does not include the right: To incite actions that would harm others (e.g., “[S]hout[ing] ‘fire’ in a crowded theater.”). Schenck v. United States, 249 U.S. 47 (1919). To make or distribute obscene materials. Roth v. United States, 354 U.S. 476 (1957). To burn draft cards as an anti-war protest. United States v. O’Brien, 391 U.S. 367 (1968). To permit students to print articles in a school newspaper over the objections of the school administration. Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988). Of students to make an obscene speech at a school-sponsored event. Bethel School District #43 v. Fraser, 478 U.S. 675 (1986). Of students to advocate illegal drug use at a school-sponsored event. Morse v. Frederick, \_\_ U.S. \_\_ (2007).

#### Previous cases prove that the First Amendment doesn’t apply to nonconsensual disclosure of sexual content – violating privacy rights is a violation of free speech

Citron 14, Danielle Citron [a law professor teaching at the University of Maryland Carey School of Law] Debunking the First Amendment Myths Surrounding Revenge Porn Laws. April 18, 2014. [www.forbes.com/sites/daniellecitron/2014/04/18/debunking-the-first-amendment-myths-surrounding-revenge-porn-laws/#2322e6584b89](http://www.forbes.com/sites/daniellecitron/2014/04/18/debunking-the-first-amendment-myths-surrounding-revenge-porn-laws/#2322e6584b89). DL 1.9.2017

The state interest in protecting the privacy of communications is strong enough to justify regulation if the communications involve “purely private” matters, like nude images. Neil Richards has persuasively [argued](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1862264), and lower courts have ruled, a lower level of First Amendment scrutiny applies to the nonconsensual publication of “domestic gossip or other information of purely private concern.” Appellate courts have affirmed the constitutionality of civil penalties under the wiretapping statute for the unwanted disclosures of private communications involving “purely private matters.” Along similar lines, lower courts have upheld claims for public disclosure of private fact in cases involving the nonconsensual publication of sex videos. In Michaels v. Internet Entertainment Group, Inc., an adult entertainment company obtained a copy of a sex video made by a celebrity couple, Bret Michaels and Pamela Anderson Lee. The court enjoined the publication of the sex tape because the public had no legitimate interest in graphic depictions of the “most intimate aspects of” a celebrity couple’s relationship. As the court explained, a video recording of two individuals engaged in sexual relations “represents the deepest possible intrusion into private affairs.” These decisions support the constitutionality of efforts to criminalize revenge porn. Nude photos and sex tapes are among the most private and intimate facts; the public has no legitimate interest in seeing someone’s nude images without that person’s consent. A prurient interest in viewing someone’s private sexual activity does not change the nature of the public’s interest. On the other hand, the nonconsensual disclosure of a person’s nude images would assuredly chill private expression. Without any expectation of privacy, victims would not share their naked images. With an expectation of privacy, victims would be more inclined to engage in communications of a sexual nature. Such sharing may enhance intimacy among couples and the willingness to be forthright in other aspects of relationships. The fear of public disclosure of private intimate communications would have a “chilling effect on private speech.”

#### Nonconsensual image distribution is constitutionally prohibited by confidentiality law. Hartzog 13,

Hartzog 13, Woodrow. [WOODROW HARTZOG is an assistant professor at Samford University’s Cumberland School of Law and affiliate scholar at the Center for Internet and Society at Stanford Law School.] "How to Fight Revenge Porn." The Atlantic: May 10, 2013. [www.theatlantic.com/technology/archive/2013/05/how-to-fight-revenge-porn/275759/](http://www.theatlantic.com/technology/archive/2013/05/how-to-fight-revenge-porn/275759/). DL 1.9.2017

But one legal argument has somehow failed to make a major appearance in revenge-porn cases: confidentiality. Broadly speaking, **to confide is "to give to the care or protection of another,"** and it is often the defining trait of explicit media shared between romantic partners. Simply put, **explicit images and videos are unlikely to be** created or **shared with an intimate without** some expectation or **implication of confidence.** This reality has been acknowledged but underutilized in the dominant narrative on non-consensual pornography. In contrast to new rights that would be created by proposed "anti-revenge porn" laws, **confidentiality is** already **a well-established legal concept.** It is older than all of the privacy torts and statutes in America. Nevertheless, the concept has languished in law and our conversations about social relationships. Arguably, there are several reasons for this. Confidentiality agreements are socially awkward and provide for limited damages. Traditionally confidential relationships are rare, usually being limited to professional relationships like those between doctors and patients and attorneys and clients. Perhaps most significantly, confidentiality law doesn't directly restrict the most injurious actor in the debate -- websites. While romantic partners who receive explicit materials might be prohibited from further disclosure, websites and other third-party recipients are not bound by the same rules because they presumably have no relationship with the person depicted in the media. But one of the most likely reasons confidentiality law has not played a larger role in the modern privacy debate is that most of our social communications are not conditioned upon an express or even implied promise of confidentiality. **It is difficult to imagine,** though, **a more illustrative context of implied confidences than explicit material shared between intimates.** Indeed, this argument has been made for some time now. Yet confidentiality law has remained a relatively limited and insignificant remedy in the larger patchwork of privacy jurisprudence. We should have a better national dialogue about a romantic partner's obligations of confidentiality. Salient norms of confidentiality would strengthen our relationships as well as the legal remedies for those whose trust has been betrayed. Notably, **confidentiality law is not as problematic under the First Amendment** as legislation or other tort remedies. **Instead of prohibiting a certain kind of speech, confidentially law enforces express or implied promises and shared expectations.** The tort of breach of confidentiality is currently very limited in scope, but could be made much more robust to sit alongside the more commonly asserted privacy torts. **Under an "inducement to breach confidentiality" theory, it is** even **possible that** certain **websites would not be able to take full advantage of the immunity typically provided** by Section 230 of the Communications Decency Act. So how are individuals in a romantic relationship supposed to determine whether information is confidential? The best practice has always been to secure an explicit promise of confidentiality. But that's not always feasible. **Confidentiality can** also **be implied,** though determining when it is is a little more complicated. Fortunately, courts have left clues in previous court cases that will help people determine when information should be considered confidential. These clues are consistent with Helen Nissenbaum's theory of privacy as contextual integrity, which has seemingly been embraced by the FTC, among others. **Based on case law,** it seems that there are a few important aspects in any given context to consider. Developed relationships are more likely to be confidential than brief or shallow ones. Confidentiality is more likely to be found when it is supported by contextual norms and when the information disclosed is sensitive. **Courts consider whether the victim requested confidentiality** and, even more importantly, whether the recipient promised not to disclose the information. These **promises can be vague or** even **implied.** The important question is whether a confidence was apparent before the sensitive information was shared. With the exception of an explicit promise of confidentiality, none of these considerations are dispositive, but rather something to be considered as part of a whole. Confidentiality is no panacea. Some victims might incorrectly assume a confidence where legally none exists. Confidentiality doesn't cover surreptitious recordings from peeping toms and the like. There is only a limited recovery available for broken contracts of confidentiality. But the law can evolve over time. If the confidential nature of intimate relationships becomes more prominent in society and enough victims assert their rights, both courts and distributors will receive a clear signal that **non-consensual pornography is actionable under one of the most basic** and important **concepts** in the history **of American privacy.** At its core, confidentiality is about people trusting other people to protect them by keeping certain information close. Trust leaves people vulnerable because the choice of whether to reveal information is no longer theirs alone. This loss of control and reliance on others is precisely why the law is willing to enforce those promises and fortify those special relationships. **Confidentiality** should no longer be assumed away in favor of ineffective remedies. It **should play a much more prominent role in the discussion surrounding non-consensual pornography. What kind of information could possibly be more confidential?**

## Sanctuary Campuses

#### Sanctuary campuses are constitutionally protected – student privacy laws make certain speech not protected

Melissa Cruz 17 summarizes Roth, 2-18-2017, "'Sanctuary Campuses' Defy Trump," No Publication, http://www.realclearpolitics.com/articles/2017/02/18/sanctuary\_campuses\_defy\_trump\_though\_at\_a\_risk\_133117.html, accessed 4-6-2017

Roth asserted that by declaring sanctuary status, colleges are in fact asking that the federal government be held accountable to rules already in place, as many of the protections listed in sanctuary declarations are currently covered under student privacy laws. “People have expressed a fear about losing funding,” Roth noted, “but the federal government is not allowed to punish schools for using policies to protect their students’ entitled rights. Vengeance is not allowable under law.” If the school were penalized, Wesleyan University would take its case to court, “because it would be a violation of the Constitution,” he said. Yet Roth knows that not all institutions may be able to make the same call, acknowledging that public schools are “at the mercy of their state legislators.”

1. Ryan Teehan [NSD staffer and competitor from the Delbarton School] – NSD Update comment on the student protests at the TOC in 2014. [↑](#footnote-ref-1)